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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

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

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

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

2 **PLEASE TAKE NOTICE** that on March 23, 2021 at 11:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department SSC-14 of the above-captioned court, located at 312 North Spring
4 Street, Los Angeles, CA 90012, the Honorable Kenneth R. Freeman presiding, Class Representatives
5 Thomas Lewis, Aurelio Sanchez, and Eliseo Leal will, and hereby do, move this Court to:

6 1. Preliminarily approve the settlement set forth in the Class Action Settlement Agreement,
7 attached as Exhibit 1 to the Declaration of Raul Perez;

8 2. Approve distribution of the proposed Notice of Class Action Settlement to the
9 Settlement Class;

10 3. Appoint CPT Group, Inc. as the Settlement Administrator; and

11 4. Set a hearing date for final approval of the settlement.

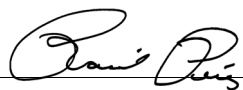
12 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
13 Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the
14 Declaration of Raul Perez; (4) the Declaration of Stephen O'Dell; (5) the Declaration of Bassil A.
15 Hamideh; (6) the Declaration of James R. Hawkins; (7) the Class Action Settlement Agreement; (8) the
16 Notice of Class Action Settlement; (9) the [Proposed] Order Granting Preliminary Approval of Class
17 Action Settlement; (10) the records, pleadings, and papers filed in this action; and (11) upon such other
18 documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of
19 this Motion.

20 As this Motion is unopposed, the Parties respectfully request relief from the page limit
21 requirement set by California Rules of Court, Rule 3.1113(12).

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Dated: February 16, 2021

Respectfully submitted,

By: 

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Brandon Brouillette
Brooke W. Waldrop
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CLASS COUNSEL

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--	----

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17	<i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004)	21
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23	<i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	21
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25	<i>Officers for Justice v. Civil Serv. Comm.</i> , 688 F. 2d 615 (C.A. Cal. 1982).....	21
26	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009).....	24
27	<i>Steenhuyse v. UBS Fin. Servs., Inc.</i> , 317 F. Supp. 3d 1062 (N.D. Cal. 2018).....	27
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14 **SECONDARY AUTHORITIES**

15 Conte & Newberg, *Newberg on Class Actions* (4th ed. 2002) 18, 20

16 Wright, A. Miller & M. Kane, *Federal Practice and Procedure* (2d ed. 1986)..... 26

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Class Representatives Thomas Lewis, Aurelio Sanchez, and Eliseo Leal are the named plaintiffs (“Plaintiffs”) in two coordinated actions brought against Defendant Express Messenger Systems, Inc. dba OnTrac (“Defendant” or “OnTrac”) (collectively with Plaintiffs, the “Parties”) for wage and hour violations: (1) *Thomas Lewis v. Express Messenger Systems*, No. BC501521 (Los Angeles County Superior Court) and (2) *Eliseo Leal v. Express Messenger Systems*, No. BC509904 (Los Angeles County Superior Court) (collectively, the “Actions”). The gravamen of the Actions is that OnTrac misclassified “last-mile” delivery drivers as independent contractors. Following 8 years of contentious litigation, the Parties were able to negotiate a global settlement of the Actions for **\$10.5 million**.

Plaintiffs accordingly seek preliminary approval of the Class Action Settlement Agreement,¹ which if approved, would provide considerable monetary relief for approximately 9,000 delivery drivers. The principal terms of the Settlement provide for the following:

- (1) A Settlement Class comprised of all individuals who personally performed last-mile delivery and pickup services for OnTrac in California at any time from February 22, 2009 to the date of Preliminary Approval, and who were designated as independent contractors (“Settlement Class Members”). Excluded from the Settlement Class definition are (1) individuals designated as Regional Service Providers during the time they were designated as Regional Service Providers, (2) individuals who have previously released claims arising from their alleged misclassification as independent contractors.
- (2) A **non-reversionary** Total Settlement Amount of **\$10,500,000**. The Total Settlement Amount includes:
 - (a) A net settlement amount of \$5,840,000 (“Net Settlement Amount”) (the Total Settlement Amount minus the requested attorneys’ fees and litigation costs, settlement administration costs, the payment to the California Labor and

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized

1 Workforce Development Agency [“LWDA”], and the Service Awards), which
2 will be allocated to all Settlement Class Members on a pro-rata basis according
3 to the number of payments each Settlement Class Member received during the
4 Class Period. **The Entire Net Settlement Amount will be paid to all**
5 **Settlement Class Members who do not opt out of the Settlement Class, and**
6 **without the need to submit claims for payment.**

- 7 (b) Attorneys’ fees in the amount of \$4,200,000, and litigation costs and expenses
8 not to exceed \$225,000, to Marlin & Saltzman, LLP; Capstone Law APC; The
9 Hamideh Firm, P.C.; and James Hawkins, APLC (collectively, “Class
10 Counsel”).
- 11 (c) Settlement administration costs of approximately \$40,000, to be paid to the
12 jointly selected Settlement Administrator, CPT Group, Inc.
- 13 (d) A \$150,000 payment to the LWDA pursuant to the Labor Code Private
14 Attorneys General Act of 2004 (“PAGA”).
- 15 (e) Service Awards of \$15,000, each, to Thomas Lewis, Aurelio Sanchez, and
16 Eliseo Leal for their service on behalf of the Settlement Class, the risks they took
17 in bringing the actions on behalf of the class, and for general releases of all
18 claims arising out of their employment with Defendant.

19 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
20 Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
21 length and confers substantial benefits to Settlement Class Members. This relief—averaging
22 approximately \$650 per Settlement Class Member from the Net Settlement Amount—is particularly
23 impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases,
24 and particularly misclassification cases. Moreover, by settling now rather than proceeding to trial,
25 Settlement Class Members will not have to wait (possibly years) for relief, nor will they have to bear the
26 risk of Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal. Class Counsel
27 _____
28 terms used herein have the same meaning as those defined by the Settlement Agreement.

1 also engaged, on multiple occasions, separate experts to conduct forensic analyses of Defendant's
2 financial condition and ability to fund a settlement. The results of this work contributed to Class
3 Counsel's good faith belief that the settlement sought in this Motion is in the best interest of the Class.

4 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
5 approval under California law, and falls within the range of reasonableness. Accordingly, Plaintiffs
6 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

7 **II. FACTS AND PROCEDURE**

8 The Settlement is the culmination of years of arduous litigation of novel and developing issues
9 that often required extensive original legal research and briefing before multiple judicial officers. Amid
10 hotly contested motion practice, there were intervening California Supreme Court decisions which
11 influenced the case's prosecution and settlement negotiations, and occasioned extensive, original
12 briefing. As such, the Parties and the Court thoroughly explored the claims and Defendant's defenses,
13 which is particularly noteworthy given the evolution of the relevant substantive and procedural law. The
14 unique breadth and scope of this litigation therefore make it practically impossible to render an
15 exhaustive summary of all the motion practice, let alone the procedural history, within reasonable page
16 limitations. Plaintiffs therefore provided the following concise summary of this matter's procedural
17 history.

18 **A. *Thomas Lewis v. Express Messenger Systems, Inc.***

19 On February 22, 2013, Plaintiff Thomas Lewis filed a class action lawsuit against Defendant
20 entitled *Thomas Lewis v. Express Messenger Systems, Inc. dba OnTrac*, Case No. BC501521, which
21 alleged that Defendant improperly classified its drivers as independent contractors instead of non-exempt
22 hourly employees. The filing of the lawsuit was preceded by months of investigation into the facts and
23 claims. The *Lewis* action asserted claims against Defendant on behalf of the putative class for: (1)
24 unpaid overtime in violation of California Labor Code² sections 510 and 1198; (2) unpaid minimum
25 wages in violation of Sections 1194, 1197, and 1197.1; (3) unpaid meal period premiums in violation of
26 Sections 226.7 and 512(a); (4) unpaid rest period premiums in violation of Section 226.7; (5) wages not

27 ² Unless indicated otherwise, further statutory references are to the California Labor Code.
28

1 timely paid upon termination in violation of Sections 201 and 202; (6) unpaid business expenses in
2 violation of Sections 2800 and 2802; (7) non-compliant wage statements in violation of section 226(a);
3 and (8) violation of California Business & Professions Code sections 17200, *et seq.* On January 31,
4 2014, Lewis filed an amended complaint realleging the prior causes of action and also alleging a claim
5 for violation of Sections 2698, *et seq.* (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.)

6 **B. *Leal v. Express Messenger Systems, Inc.***

7 On May 23, 2013, Plaintiff Eliseo Leal filed his action against Defendant in the Los Angeles
8 Superior Court, entitled *Leal v. Express Messenger Systems, Inc. dba OnTrac*, Case No. BC509904.
9 Like *Lewis*, the *Leal* action alleged that Defendant misclassified its drivers as independent contractors
10 instead of hourly employees, and alleged the following causes of action: (1) declaratory relief; (2) failure
11 to pay minimum wages in violation of California Labor Code section 1194; (3) failure to pay wages at
12 the designated rate in violation of California Labor Code section 1194; (4) failure to pay overtime wages
13 in violation of California Labor Code section 510 and 1194; (5) failure to reimburse expenses in
14 violation of California Labor Code section 2802; (6) quantum meruit / unjust enrichment; (7) failure to
15 provide meal periods in violation of California Labor Code sections 226.7 and 512; (8) failure to provide
16 rest periods in violation of California Labor Code sections 226.7; (9) failure to timely furnish accurate
17 itemized wage statements in violation of California Labor Code section 226; (10) waiting time penalties
18 per California Labor Code sections 201-203; and (11) violation of California Business & Professions
19 Code sections 17200, *et seq.* (Perez Decl. ¶ 3.)

20 **C. *Coordination of the Lewis and Leal Actions***

21 Following the filing of the *Lewis* and *Leal* actions, numerous additional related cases were filed
22 against Defendant throughout the State of California. In response, Defendant moved for coordination,
23 which was granted on August 26, 2014. The coordinated case proceeded before several different judges
24 with many of the additional cases stayed. On February 2, 2017, the coordinated proceeding was assigned
25 to this Court. The Court issued a Case Management Order on April 12, 2017, consolidating *Lewis* and
26 *Leal* and continuing the stay of all other coordinated cases. The consolidated class action complaint was
27 filed and served on or about December 14, 2017, and is the operative complaint. (Perez Decl. ¶ 4.)
28

1 **D. The Court Partially Grants Plaintiffs’ Motion for Class Certification**

2 On September 17, 2018, Plaintiffs moved to certify a class of all “first and last mile” delivery
3 drivers for Defendant who handled On Trac shipments in the State of California at any time from
4 February 22, 2009 to the date of certification. Plaintiffs specifically sought to certify the following
5 claims: (1) unpaid overtime; (2) unpaid minimum wages; (3) unpaid meal period premiums; (4) unpaid
6 rest period premiums; (5) wages not timely paid upon termination; (6) unpaid business expenses; (7)
7 non-compliant wage statements; (8) declaratory relief; (9) quantum meruit/unjust enrichment; and (10)
8 unfair business practices under the Unfair Competition Law (“UCL”). (Perez Decl. ¶ 5.)

9 On January 18, 2019, the Court entered an order certifying the following class of delivery
10 drivers:

11 All “first and last mile” delivery drivers for defendant who handled OnTrac
12 shipments in the state of California at any time from February 22, 2009, to the
13 present. Excluded from the proposed class are those drivers and/or businesses
14 that entered into direct contractual agreements with defendant (other than a
market agreement) and drivers classified as employees by those excluded drivers
and/or businesses.

15 (Perez Decl. ¶ 6.)

16 The Class claims certified allege that OnTrac failed to pay overtime, failed to pay minimum
17 wages, failed to provide drivers with meal periods or appropriate compensation for missed meal periods,
18 failed to provide drivers with rest periods or appropriate compensation for missed rest periods, failed to
19 provide drivers with accurate wage statements, and engaged in unfair business practices under the Unfair
20 Competition Law. (Perez Decl. ¶ 7.)

21 On March 19, 2019, OnTrac filed a petition for writ of mandate wherein it asked the Court of
22 Appeal to vacate the certification order. On February 28, 2019, the Parties stipulated to stay the action
23 pending the Court of Appeal’s decision on OnTrac’s writ petition. Following the denial of the writ
24 petition, the Court lifted the stay on July 19, 2019. The Court subsequently set a Trial Readiness
25 Conference for June 24, 2020. (Perez Decl. ¶ 8.)

26 **E. The Parties Settled After Protracted Negotiations**

27 Throughout the course of the litigation, the Parties participated in multiple in-person meetings
28 (through their counsel) in an attempt to settle the claims at issue. These settlement efforts were conducted

1 during both formal mediation (mediated by Mark Rudy, Esq.) and face-to-face meetings between
2 counsel and Defendant outside of mediation. Following years of negotiations, the Parties were finally
3 able to negotiate a complete and fair resolution of all claims at issue, which is set forth in complete and
4 final form in the Settlement Agreement. (Perez Decl. ¶ 9.)

5 **III. THE PROPOSED SETTLEMENT FULLY RESOLVES PLAINTIFFS' CLAIMS**

6 **A. Composition of the Settlement Class**

7 The proposed Settlement Class consists of all individuals who personally performed last-mile
8 delivery and pickup services for OnTrac in California at any time from February 22, 2009 to the date of
9 Preliminary Approval, and who were designated as independent contractors. Excluded from the class
10 definition are (1) individuals designated as Regional Service Providers during the time they were
11 designated as Regional Service Providers, (2) individuals who have previously released claims arising
12 from their alleged misclassification as independent contractors. (Settlement Agreement ¶¶ 2.3, 2.33.)
13 There are approximately 9,000 Settlement Class Members.

14 **B. Settlement Consideration**

15 Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for the
16 Total Settlement Amount of \$10,500,000. The Total Settlement Amount includes: (1) automatic
17 payments to all Settlement Class Members—meaning, all Settlement Class Members except those who
18 submit timely and valid Requests for Exclusion—from the \$5,840,000 Net Settlement Amount; (2)
19 \$4,200,000 in attorneys' fees and up to \$225,000 in litigation costs to Class Counsel; (3) Settlement
20 Administration Costs of approximately \$40,000; (4) a \$150,000 payment to the LWDA; and (5) Service
21 Awards of \$15,000, each, for Plaintiffs' service on behalf of the Settlement Class, the risks they took in
22 bringing their representative claims, and for a releases of all claims arising out of their employment with
23 Defendant. (Settlement Agreement ¶¶ 2.19, 2.26, 2.29, 2.34, 10.3.)

24 Subject to the Court approving the attorneys' fees and costs, settlement administration costs, the
25 payment to the LWDA, and the Service Awards, the Net Settlement Amount will be distributed to
26 Participating Settlement Class Members in full.

27 **C. Formula for Calculating Payments from the Net Settlement Amount**

28 Each Settlement Class Member's share of the Net Settlement Amount will be proportional to

the number of payments (“Active Settlement Periods”) they received during the Class Period.

(Settlement Agreement ¶¶ 2.1, 2.4, 5.3, 6.2-6.3.) The Settlement Administrator will calculate Individual Settlement Payments as follows:

- Defendant will calculate the total number of periods in which a Class Member received a payment via Subcontracting Concepts, Inc. (“SCI”), based on the records and data maintained by SCI, for each Class Member from the time period between February 22, 2009 and [the date of Preliminary Approval] (“Active Settlement Periods”).
- Each Class Member’s share of the Net Settlement Amount will be calculated according to the following formula: $\text{Class Member's Active Settlement Periods} \div \text{Entire Class' Active Settlement Periods} \times \text{Net Settlement Amount}$.
- The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

(See Settlement Agreement, Exhibit A, p. 2.)

Given that there are approximately 9,000 Settlement Class Members, the average net recovery will be approximately \$650. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.)

(average net recovery of approximately \$80).

D. Release by the Settlement Class

In exchange for the Total Settlement Amount, Plaintiffs and Participating Settlement Class Members will agree to release the Settlement Class Members' Released Claims during the Class Period:

Any and all present and past claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) based on or reasonably related to the conduct alleged in the Complaint during the Settlement Period, and specifically to claims pursuant to California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432.432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 *et seq.* (PAGA Claims), and 3700 *et seq.*; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code sections 17200 *et seq.*; and any other similar California state or federal law, for non-payment of wages, minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage statements, failure to provide workers' compensation insurance, meal periods, rest breaks, final pay, waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest. "Settlement Class Members' Released Claims" do not include claims that, as a matter of law cannot be released. The "Settlement Class Members' Released Claims" are released from February 22, 2009 through preliminary approval of this Settlement.

(Settlement Agreement ¶ 2.32.)

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE PROPOSED CLASS ACTION SETTLEMENT

A. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement"). The motion for

preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys' fees. *Id.* at 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg").

Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation;" and (4) the percentage of objectors "is small" (collectively, "*Dunk* Factors"). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).³

³ The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* at 1118.

1 **1. Class Counsel Conducted a Thorough Investigation of the Factual and**
2 **Legal Issues and Were Thus Able to Objectively Assess the Settlement’s**
3 **Reasonableness**

4 Class Counsel’s evaluation of the settlement terms was informed by several factors, including
5 their analysis of the considerable discovery and information that had been exchanged during the Actions’
6 pendency. (Perez Decl. ¶ 10.)

7 Pre-Litigation Investigation: At the outset of the litigation, Plaintiffs and other workers
8 interviewed by Class Counsel provided detailed accounts of their experiences delivering OnTrac
9 packages, and the circumstances that gave rise to the alleged misclassification and resulting Labor Code
10 violations. In addition to informing Class Counsel’s initial evaluation of the lawsuits, the information that
11 Plaintiffs and other workers provided also influenced Class Counsel’s formal discovery efforts, including
12 written discovery and lines of inquiry at depositions. (Perez Decl. ¶ 11.)

13 Written Discovery: Plaintiffs’ written discovery requests led to the production of considerable
14 evidence, including the policies and practices directly at issue. Class Counsel analyzed tens of
15 thousands of pages of documents that has been produced by OnTrac, and were able to identify the
16 policies and procedures that ultimately formed the backbone of the motion for class certification. Class
17 Counsel also sought Settlement Class Members’ scanner data, from which they derived approximate
18 time data. Class Counsel’s analysis of these records was used in connection with the motion for class
19 certification, and thereafter, in connection with Class Counsel’s evaluation of OnTrac’s potential liability
20 for the misclassification claims. (Perez Decl. ¶ 12.)

21 Settlement Class Member Interviews and Declarations: Following the production of the
22 Settlement Class Members’ contact information, Class Counsel interviewed numerous Settlement Class
23 Members to determine the extent and frequency of the alleged violations and to learn more about the
24 day-to-day circumstances giving rise to the alleged violations. Class Counsel also obtained declarations
25 from Settlement Class Members in support of the Motion for Class Certification. (Perez Decl. ¶ 13.)

26 Depositions: The parties took 11 depositions (some of which took place over multiple days).
27 OnTrac deposed Plaintiffs and Settlement Class Members who provided declarations in support of
28 Plaintiffs’ motion for class certification. Class Counsel also deposed OnTrac’s corporate designee. These

depositions provided considerable evidence concerning, *inter alia*, the strengths and weaknesses related to the claims. (Perez Decl. ¶ 14.)

Trial Preparation: With trial approaching, Plaintiffs had already begun preparing for trial by developing trial plans, gathering trial witnesses, and consulting with their experts. (Perez Decl. ¶ 15.)

In summary, by engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Class Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Settlement Class Members considering all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. (Perez Decl. ¶ 16.)

2. The Settlement Was Reached Through Arm's-Length Bargaining in which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

As explained above, during the pendency of the litigation, the Parties participated in multiple in-person meetings in an attempt to settle the claims at issue. These settlement efforts were conducted during formal mediation with Mark Rudy, Esq., and in face-to-face meetings between counsel and Defendant outside of mediation. After years of arm's length negotiations, the Parties were finally able to negotiate a complete and fair resolution of all claims at issue, which are set forth in complete and final form in the Settlement Agreement.

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs are represented by Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC. Class Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Perez Decl. ¶¶ 17-19, Ex. 2; Declaration of Stephen O'Dell ["O'Dell Decl."] ¶¶ 3-17; Declaration of Bassil A. Hamideh ["Hamideh"] ¶¶ 3-4, 8;

1 Declaration of James R. Hawkins ["Hawkins"] ¶¶ 8-10.)

2 Defendant is represented by Littler Mendelson, P.C, a respected defense firm.

3 **3. The Consideration Provided for the Class Claims Is Fair and Reasonable**
4 **in Light of the Amount in Controversy Discounted by the Risks of**
5 **Continued Litigation**

6 In seeking approval, a settling party must provide sufficient information to "enable the court to
7 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
8 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement
9 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
10 unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615,
11 628 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative
12 measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement
13 figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the
14 expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair &*
15 *Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words,
16 in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value
17 of the settled claims for risks such as changes in the law, the probability of success, and other factors.⁴

18 Settling parties are not, however, required to partake in a hypothetical accounting exercise:

19 **"Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record
20

21 ⁴ Federal district courts also recognize that there is an inherent "range of reasonableness" in
22 determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any
23 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
24 completion." *Id.* at 188, *quoting Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). *See In re Omnivision*
25 *Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); *see also Nat'l Rural Telecomm. Coop. v. Directv,*
26 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well settled law that a proposed settlement may be
27 acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing*
28 *Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) ("settlement amount's ratio to the
maximum potential recovery need not be the sole, or even dominant, consideration when assessing
settlement's fairness"); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)
("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic
estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in
light of strength of the claims"); *Officers for Justice v. Civil Serv. Comm.*, 688 F. 2d 615, 628 (C.A. Cal.
1982) (it is "the complete package, taken as a whole rather than the individual component parts, that
must be examined for overall fairness").

which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’”⁴ *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Total Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Claim	Estimated Damages/Penalties
Minimum Wage / Overtime Claim ⁵	\$22,925,000.00
Business Expense Reimbursement Claim ⁶	\$35,000,000.00
Meal Period Claim ⁷	\$12,229,000.00
Rest Period Claim ⁸	\$18,343,500.00
Wage Statement Claim ⁹	\$6,800,000.00
Final Pay Claim ¹⁰	\$8,061,000.00

⁵ Class Counsel estimate that Settlement Class Members worked a total of 3.5 million days (consistent with Plaintiffs’ allegations, these will be called “shifts”) during the Class Period. Conservatively assuming that approximately 50% of these shifts were longer than 8 hours, and that Settlement Class Members worked at least a half hour of overtime per shift over 8 hours, at an overtime rate of approximately \$26.20 (using the Bureau of Labor Statistics blended rate for the Class Period, \$17.47, and multiplying that rate by 1.5), Defendant’s exposure would be approximately \$22,925,000.

⁶ Conservatively estimating that Settlement Class Members incurred approximately \$10 in expenses for tools per shift, Defendant’s exposure for business expense reimbursement would be approximately \$35,000,000.

⁷ Class Counsel estimate that approximately 80% of all shifts qualified for meal periods. Conservatively estimating a 25% violation rate, Defendant’s exposure would be approximately \$12,229,000.

⁸ Class Counsel assumed that 100% of all shifts qualified for rest periods. Conservatively estimating a 30% violation rate, Defendant’s exposure would be \$18,343,500.

⁹ A total of approximately 6,800 Settlement Class Members worked during the one-year statute of limitations for the wage statement claim. Assuming that each Settlement Class Member would have recovered maximum penalties of \$4,000, Defendant’s maximum exposure would be \$27,200,000. However, this derivative wage statement claim is only as strong as Plaintiffs’ underlying claims. Defendant also argued that to recover penalties for wage statement violations, Plaintiffs would have had to prove that it “knowingly” and “intentionally” issued wage statements with unlawful deficiencies. *See* Lab. Code § 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142-43 (2011). Given the contingent nature of the wage statement claim, and the strength of Defendant’s defenses to all claims, Plaintiff’s Counsel discounted Defendants’ exposure by 75%, or to approximately \$6,800,000.

¹⁰ Defendant’s exposure would be as follows: 7,690 former workers × \$17.47/hour × 8 hours/day × 30 days = \$32,242,632. However, while Section 203 penalties are relatively straightforward to calculate, the analysis becomes more difficult for settlement purposes as derivative waiting-time penalties are only as strong as the underlying predicate claims, and are subject to good faith defenses. For example, Defendant argued that no waiting-time penalties can be awarded unless the failure to pay wages is “willful,” an element that Plaintiffs acknowledge would have been difficult to prove at trial. *See* Cal. Code Regs. tit. 8,

Claim	Estimated Damages/Penalties
Total	\$103,358,500.00

This estimate assumes that Plaintiffs would have prevailed at trial and that the jury's verdict would have been affirmed on appeal. In other words, this estimate assumes total victory. Class counsel also engaged, on multiple occasions, separate experts to conduct forensic analyses of Defendant's financial condition and ability to fund a settlement. The results of this work contributed to Class counsel's good faith belief that the settlement sought in this Motion is in the best interest of the Class. Understandably, for purposes of evaluating the settlement's reasonableness, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). Ultimately, Class Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiffs' claims; (ii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (iii) the risk of losing at trial; (iv) the chances of a favorable verdict being reversed on appeal; and (v) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

After taking into account the Discount Factors, Class Counsel determined that it would be reasonable to settle for a fraction of Defendant's maximum potential exposure for the class claims (PAGA discussed in the following section), or approximately 10%. Such a discount is inherently reasonable given that Plaintiffs would have had to overcome **multiple, dependent** contingencies to prevail on their claims. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-

§ 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."). Given the contingent nature of the Section 203 claim, and the strength of Defendant's defenses to all claims, Class

58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).¹¹

4. The Court Should Preliminarily Approve the Negotiated Service Awards

Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named plaintiffs is

Counsel discounted Defendant’s exposure by 75%, or to approximately \$8,061,000.

¹¹ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 that they should be compensated for the expense or risk they have incurred in conferring a benefit on
2 other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806
3 (2009).

4 Approximately 9,000 current and former drivers will share a \$10,500,000 settlement fund due
5 entirely to the effort and commitment of Thomas Lewis, Aurelio Sanchez, and Eliseo Leal. Subject to
6 Court approval, therefore, the Settlement provides for Service Awards of \$15,000, each. The Service
7 Awards are fair and reasonable compensation for Plaintiffs’ effort in pursuing the action, serving as
8 private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly
9 conferring with counsel on the status of their case and the strategies for prosecuting the claims, and
10 reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
11 Settlement Class.

12 Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval
13 of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for
14 preliminary approval of the negotiated Service Awards.

15 **5. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees**
16 **and Costs**

17 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took
18 the risk of non-payment and invested in a case that achieved a substantial positive result for the class. At
19 final approval, Plaintiffs will seek Court-approval of attorneys’ fees of \$4,200,000 (40% of the Total
20 Settlement Amount) and \$225,000 in litigation costs. Class Counsel will provide ample support, in the
21 form of detailed lodestar and cost summaries, for the requested attorneys’ fees and costs.

22 **6. The Proposed Notice Properly Informs Settlement Class Members about**
23 **the Settlement**

24 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
25 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
26 information to decide whether they should accept the benefits offered, opt out and pursue their own
27 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
28 143, 151-52 (1975). The notice must advise class members “that they may be excluded from the class if

1 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
2 request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
3 class members, California authorities generally require service of the class notice by mail or similar
4 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
5 960, 972 (1975).¹²

6 The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which
7 fairly and neutrally informs Settlement Class Members of their rights and remedies in this action. The
8 proposed Class Notice will be mailed to all Settlement Class Members by First Class mail and will
9 include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s
10 terms, the class definition, the procedure and time period within which to submit Requests for Exclusions
11 or objections to the Settlement, the date for the final approval hearing, the formula used to calculate
12 settlement payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit
13 A.)

14 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
15 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
16 Agreement ¶ 6.6.)

17 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
18 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v.*
19 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the
20 terms of the proposed compromise and of the options open to dissenting class members.”).

21 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE PAGA SETTLEMENT**

22 Pursuant to the Settlement Agreement, \$200,000 from the Class Settlement Amount shall be
23 allocated to the resolution of the PAGA claim, of which 75% (\$150,000) will be paid directly to the
24 LWDA, and the remaining 25% (\$50,000) will be paid to Participating Settlement Class Members.

25
26 ¹² Due process does not require that each Settlement Class Member actually receive a notice, but
27 rather a procedure reasonably certain to reach Settlement Class Members. *Wright, A. Miller & M. Kane,*
28 *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Settlement
Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v.*
Elrod, 826 F.2d 729, 732 (7th Cir. 1987).

1 (Settlement Agreement ¶ 2.19.)

2 This result was reached after good-faith negotiation between the parties. The amount was valued
3 as follows: Based on information and evidence produced by Defendant during discovery, Class Counsel
4 determined that the alleged aggrieved employees worked a combined total of approximately 250,000
5 “pay periods”¹³ during the PAGA statute of limitations period (“PAGA Period”). Statutory penalties
6 would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the
7 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
8 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
9 aggrieved employee per pay period for each subsequent violation.

10 However, a number of courts have found that the “subsequent” penalty under PAGA applies
11 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.
12 *See Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June
13 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies
14 the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the
15 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty
16 of \$200 for subsequent violations will not be calculated to determine the amount in controversy”);
17 *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v.*
18 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
19 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing
20 a violation, they are not subject to the heightened penalties.”); *Willis v. Xerox Bus. Servs., LLC*, No. No.
21 1:13-cv-01353-LJO-JLT, 2013 WL 6053831, at *6 (E.D. Cal. Nov. 15, 2013) (same); *Allen v. Utiliquest,*
22 *LLC*, No. C 13-00049 SBA, 2013 WL 4033673, at *8 (N.D. Cal. Aug. 1, 2013) (same); *Jimenez v.*
23 *Menzies Aviation, Inc.*, No. C 10-03477 SBA, 2013 WL 1411228, at *4 (N.D. Cal. Apr. 8, 2013) (same);
24 *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL
25 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened
26

27 ¹³ Given Plaintiffs’ allegation that Settlement Class Members should have been classified as
28 non-exempt employees, Plaintiffs’ preference is to use the term “pay periods,” although Defendant
disputes that characterization.

1 penalties for subsequent violations unless and until a court or commissioner notifies the employer that it
2 is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).
3 Under this line of cases, Defendant's exposure would be approximately \$25,000,000 = 250,000 violative
4 pay periods × \$100.

5 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
6 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
7 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
8 reducing PAGA penalties, courts have considered issues including whether the employees suffered
9 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
10 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
11 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
12 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
13 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

14 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
15 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
16 **or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the
17 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith
18 attempts” to comply with meal period obligations and because the court found the violations were
19 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced
20 award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied here,
21 Plaintiffs would have recovered only approximately \$52,500 (\$25,000,000 × 0.0021 reduction).

22 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
23 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
24 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
25 under specified PAGA claim where the employer produced evidence that it took its obligations
26 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
27 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
28 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*

1 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
2 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
3 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
4 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
5 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
6 other PAGA claims).

7 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
8 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
9 approved by California courts.¹⁴ Where PAGA penalties are negotiated in good faith and “there is no
10 indication that [the] amount was the result of self-interest at the expense of other Settlement Class
11 Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No.
12 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com.*
13 *Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a
14 settlement which does not allocate any damages to the PAGA claims.”).

15 VI. CONCLUSION

16 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
17 presented the materials and information necessary for preliminary approval, the Parties request that the
18

19 ¹⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
20 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
21 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
22 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
23 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
24 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
25 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
26 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
27 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
28 *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane
Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated
to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County
Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*
Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

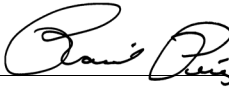
1 Court preliminarily approve the settlement.

2

3 Dated: February 16, 2021

Respectfully submitted,

4

By: 

5

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Brandon Brouillette
Brooke W. Waldrop
CAPSTONE LAW APC

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7

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Stephen P. O'Dell, Esq.
MARLIN & SALTZMAN, LLP

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Bassil A. Hamideh
THE HAMIDEH FIRM, P.C.

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James R. Hawkins, Esq.
Gregory E. Mauro, Esq.
JAMES HAWKINS, APLC

12

13

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Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

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9 Class Counsel

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11 Gregory E. Mauro, Esq.
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19 Class Counsel

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1 drivers as independent contractors instead of hourly employees, and alleged the following causes of
2 action: (1) declaratory relief; (2) failure to pay minimum wages in violation of California Labor Code
3 section 1194; (3) failure to pay wages at the designated rate in violation of California Labor Code section
4 1194; (4) failure to pay overtime wages in violation of California Labor Code section 510 and 1194; (5)
5 failure to reimburse expenses in violation of California Labor Code section 2802; (6) quantum meruit /
6 unjust enrichment; (7) failure to provide meal periods in violation of California Labor Code sections
7 226.7 and 512; (8) failure to provide rest periods in violation of California Labor Code sections 226.7;
8 (9) failure to timely furnish accurate itemized wage statements in violation of California Labor Code
9 section 226; (10) waiting time penalties per California Labor Code sections 201-203; and (11) violation
10 of California Business & Professions Code sections 17200, *et seq.*

11 4. Following the filing of the *Lewis* and *Leal* actions, numerous additional related cases
12 were filed against Defendant throughout the State of California. In response, Defendant moved for
13 coordination, which was granted on August 26, 2014. The coordinated case proceeded before several
14 different judges with many of the additional cases stayed. On February 2, 2017, the coordinated
15 proceeding was assigned to this Court. The Court issued a Case Management Order on April 12, 2017,
16 consolidating *Lewis* and *Leal* and continuing the stay of all other coordinated cases. The consolidated
17 class action complaint was filed and served on or about December 14, 2017, and is the operative
18 complaint.

19 5. On September 17, 2018, Plaintiffs moved to certify a class of all “first and last mile”
20 delivery drivers for Defendant who handled On Trac shipments in the State of California at any time
21 from February 22, 2009 to the date of certification. Plaintiffs specifically sought to certify the following
22 claims: (1) unpaid overtime; (2) unpaid minimum wages; (3) unpaid meal period premiums; (4) unpaid
23 rest period premiums; (5) wages not timely paid upon termination; (6) unpaid business expenses; (7)
24 non-compliant wage statements; (8) declaratory relief; (9) quantum meruit/unjust enrichment; and (10)
25 unfair business practices under the Unfair Competition Law (“UCL”).

26 6. On January 18, 2019, the Court entered an order certifying the following class of
27 delivery drivers:

28 All “first and last mile” delivery drivers for defendant who handled OnTrac

1 shipments in the state of California at any time from February 22, 2009, to the
2 present. Excluded from the proposed class are those drivers and/or businesses
3 that entered into direct contractual agreements with defendant (other than a
market agreement) and drivers classified as employees by those excluded drivers
and/or businesses.

4 7. The Class claims certified allege that OnTrac failed to pay overtime, failed to pay
5 minimum wages, failed to provide drivers with meal periods or appropriate compensation for missed
6 meal periods, failed to provide drivers with rest periods or appropriate compensation for missed rest
7 periods, failed to provide drivers with accurate wage statements, and engaged in unfair business practices
8 under the Unfair Competition Law.

9 8. On March 19, 2019, OnTrac filed a petition for writ of mandate wherein it asked the
10 Court of Appeal to vacate the certification order. On February 28, 2019, the Parties stipulated to stay the
11 action pending the Court of Appeal's decision on OnTrac's writ petition. Following the denial of the writ
12 petition, the Court lifted the stay on July 19, 2019. The Court subsequently set a Trial Readiness
13 Conference for June 24, 2020.

14 **THE PARTIES SETTLED AFTER PROTRACTED NEGOTIATIONS**

15 9. Throughout the course of the litigation, the Parties participated in multiple in-person
16 meetings (through their counsel) in an attempt to settle the claims at issue. These settlement efforts were
17 conducted during both formal mediation (mediated by Mark Rudy, Esq.) and face-to-face meetings
18 between counsel and Defendant outside of mediation. Following years of negotiations, the Parties were
19 finally able to negotiate a complete and fair resolution of all claims at issue, which is set forth in
20 complete and final form in the Class Action Settlement Agreement and Release, attached as Exhibit 1. A
21 copy of the Class Action Settlement Agreement and Release has been submitted to the LWDA at
22 <https://dir.tfaforms.net>. Plaintiffs will file a fully-executed copy of the Class Action Settlement
23 Agreement and Release once all signatures are received.

24 **CLASS COUNSEL CONDUCTED A THOROUGH INVESTIGATION OF THE FACTUAL AND LEGAL ISSUES**
25 **AND WERE THUS ABLE TO OBJECTIVELY ASSESS THE SETTLEMENT'S REASONABLENESS**

26 10. Class Counsel's evaluation of the settlement terms was informed by several factors,
27 including their analysis of the considerable discovery and information that had been exchanged during
28 the Actions' pendency.

1 11. Pre-Litigation Investigation: At the outset of the litigation, Plaintiffs and other workers
2 interviewed by Class Counsel provided detailed accounts of their experiences delivering OnTrac
3 packages, and the circumstances that gave rise to the alleged misclassification and resulting Labor Code
4 violations. In addition to informing Class Counsel's initial evaluation of the lawsuits, the information that
5 Plaintiffs and other workers provided also influenced Class Counsel's formal discovery efforts, including
6 written discovery and lines of inquiry at depositions.

7 12. Written Discovery: Plaintiffs' written discovery requests led to the production of
8 considerable evidence, including the policies and practices directly at issue. Class Counsel analyzed
9 tends of thousands of pages of documents that has been produced by OnTrac, and were able to identify
10 the policies and procedures that ultimately formed the backbone of the motion for class certification.
11 Class Counsel also sought Class Members' scanner data, from which they derived approximate time
12 data. Class Counsel's analysis of these records was used in connection with the motion for class
13 certification, and thereafter, in connection with Class Counsel's evaluation of OnTrac's potential liability
14 for the misclassification claims.

15 13. Class Member Interviews and Declarations: Following the production of the Class
16 Members' contact information, Class Counsel interviewed numerous Class Members to determine the
17 extent and frequency of the alleged violations and to learn more about the day-to-day circumstances
18 giving rise to the alleged violations. Class Counsel also obtained declarations from Class Members in
19 support of the Motion for Class Certification.

20 14. Depositions: The parties took 11 depositions (some of which took place over multiple
21 days). OnTrac deposed Plaintiffs and Class Members who provided declarations in support of Plaintiffs'
22 motion for class certification. Class Counsel also deposed OnTrac's corporate designee. These
23 depositions provided considerable evidence concerning, *inter alia*, the strengths and weaknesses related
24 to the claims.

25 15. Trial Preparation: With trial approaching, Plaintiffs had already begun preparing for trial
26 by developing trial plans, gathering trial witnesses, and consulting with their experts.

27 16. In summary, by engaging in such a thorough investigation and evaluation of Plaintiffs'
28 claims, Class Counsel can opine that the Settlement, for the consideration and on the terms set forth in

1 the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members
2 considering all known facts and circumstances, including the risk of significant delay and uncertainty
3 associated with litigation, various defenses asserted by Defendant.

4 **CAPSTONE LAW APC FIRM PROFILE**

5 17. Capstone is one of California's largest plaintiff-only labor and consumer law firms. With
6 over twenty-five seasoned attorneys, Capstone has the experience, resources, and expertise to
7 successfully prosecute complex employment and consumer actions.

8 18. Since its founding in 2012, Capstone has emerged as a major force in aggregate
9 litigation, making law on cutting-edge issues and obtaining over \$200 million in recovery for employees
10 and consumers. The firm's accomplishments include:

- 11 a. In February 2015, Ryan H. Wu and I were honored with the prestigious California
12 Lawyer of the Year (CLAY) award in labor and employment for our work in the
13 landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348
14 (2014), which preserved the right of California workers to bring representative
15 actions under the Labor Code Private Attorneys General Act ("PAGA")
16 notwithstanding a representative action waiver in an arbitration agreement.
- 17 b. Recognized as a leading firm in the prosecution of PAGA enforcement actions,
18 Capstone is responsible for some of the most important decisions in this area. In
19 *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone
20 attorneys achieved a landmark decision before the California Supreme Court as to
21 the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs.*
22 *Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone
23 attorneys successfully argued that PAGA actions are state enforcement actions not
24 covered by the Class Action Fairness Act.

25 19. Attached as Exhibit 2 is a true and correct copy of Capstone's firm resume.
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27
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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 22nd day of February, 2021, at Los Angeles, California.

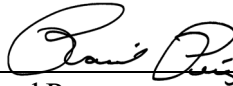
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5 Raul Perez
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Exhibit 1

ROBERT G. HULTENG, Bar No. 071293
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Attorneys for Defendant
EXPRESS MESSENGER SYSTEMS, INC., DBA
ONTRAC

ADDITIONAL COUNSEL ON FOLLOWING PAGES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 3.550)

Judicial Council Coordination Proceeding No.
JCCP 4789

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

ASSIGNED FOR ALL PURPOSES TO:
HON. KENNETH FREEMAN, SPRING
STREET, DEPT. 14

Included Actions:

**CLASS ACTION SETTLEMENT
AGREEMENT**

*Lewis v. Express Messenger Systems, Inc.,
et al.*, Los Angeles County Superior Court
No. BC501521

Complaint Filed: February 22, 2013 (*Lewis*);
FAC Filed: January 29, 2014 (*Lewis*)

*Leal v. Express Messenger Systems, Inc., et
al.*, Los Angeles County Superior Court
No. BC509904

Complaint Filed: May 23, 2013 (*Leal*)

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Attorneys for Plaintiffs
THOMAS LEWIS and AURELIO SANCHEZ

1 This Class Action Settlement Agreement and Release, including Exhibits A and B hereto
2 ("Settlement Agreement" or "Agreement"), is made and entered into by, between, and among
3 Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal ("Plaintiffs") on behalf of themselves and
4 the Settlement Class (as defined below) and the State of California Labor and Workforce Development
5 Agency ("LWDA"), on the one hand, and Defendant Express Messenger Systems, Inc., dba OnTrac (
6 "Defendant" or "OnTrac") on the other hand. Plaintiffs and Defendant (collectively, the "Parties")
7 enter into this Agreement to effect a full and final settlement and preclusive judgment resolving all
8 claims based on or reasonably related to the conduct alleged in the complaints filed in the actions
9 against Defendant in *Thomas Lewis and Aurelio Sanchez v. Express Messenger Systems, Inc., dba*
10 *OnTrac*, Case No: BC501521 filed in Los Angeles Superior Court on February 22, 2013, and *Eliseo*
11 *Leal v. Express Messenger Systems, Inc., dba OnTrac*, Case No: BC509904 filed in Los Angeles
12 Superior Court on May 23, 2013, and all amended complaints filed thereafter, as well as the claims
13 brought or that could have been brought in the Class Action Complaint filed in Los Angeles County
14 Superior Court on December 14, 2017 (collectively, the "Action"), and all claims based on to the facts
15 asserted therein. This Agreement is intended to fully and finally compromise, resolve, discharge, and
16 settle the Released Claims, as defined and on the terms set forth below, and to the full extent reflected
17 herein, subject to the approval of the Court.

18 **I. RECITALS**

19 This Agreement is made in consideration of the following facts:

20 1.1 WHEREAS, on February 22, 2013, Plaintiff Thomas Lewis filed a putative class action
21 complaint against Express Messenger Systems, Inc., dba OnTrac in Los Angeles Superior Court, Case
22 No. BC501521, asserting various wage-related claims, on behalf of himself and a proposed class
23 consisting of all drivers in California making deliveries for OnTrac's clients and classified as
24 independent contractors, excluding Regional Service Providers and multiple-route drivers. The Lewis
25 Complaint alleged the following eight causes of action (1) unpaid overtime, (2) unpaid minimum
26 wages, (3) unpaid meal period premiums, (4) unpaid rest period premiums, (5) wages not timely paid
27 upon termination, (6) unpaid business expenses, (7) non-compliant wage statements, and (8) unfair
28 business practices. On February 3, 2014, Plaintiff Lewis filed a First Amended Complaint, adding

1 Plaintiff Aurelio Sanchez as a party and a cause of action for (9) violation of the Private Attorneys
2 General Act (“PAGA”).

3 1.2 WHEREAS, on May 23, 2013, Plaintiff Eliseo Leal filed a putative class action
4 complaint against Express Messenger Systems, Inc., dba OnTrac in Los Angeles Superior Court, Case
5 No. BC509904, asserting various wage-related claims, on behalf of himself and a proposed class
6 consisting of all drivers in California making deliveries for OnTrac’s clients and classified as
7 independent contractors, excluding back-up drivers. The Leal Complaint alleged the following eleven
8 causes of action (1) declaratory relief, (2) failure to pay minimum wages, (3) failure to pay wages at
9 the designated rate, (4) failure to pay overtime wages, (5) failure to reimburse expenses, (6) quantum
10 meruit/unjust enrichment, (7) failure to provide meal periods, (8) failures to provide rest periods, (9)
11 failure to timely furnish accurate itemized wage statements, (10) waiting time penalties, and (11)
12 violation of the unfair competition law.

13 1.3 WHEREAS, on August 5, 2013, the Court related the *Lewis* action and the *Leal* action,
14 and assigned the *Lewis* action as the lead action.

15 1.4 WHEREAS, Defendant denies the allegations in the Action; denies that it has engaged
16 in any wrongdoing; denies that Plaintiffs’ allegations constitute valid claims; denies that Plaintiffs’
17 claims could properly be maintained as a PAGA representative action; and states that it is entering
18 into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation,
19 and on the express conditions that (a) if for any reason the Settlement is not finalized according to the
20 terms of this Agreement, the Settlement and the documents generated as a result of the Settlement
21 shall not be usable for any purpose in the Action, and (b) this Settlement and the documents generated
22 as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding
23 or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment
24 and agreements arising from this Settlement;

25 1.5 WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties
26 are due from Defendant to any Plaintiff, Settlement Class Member, or to the LWDA;

27 1.6 WHEREAS, while litigating the Action, the parties engaged in substantial discovery,
28 including requests for depositions, document requests, interrogatories, and requests for admission

propounded by both Plaintiffs and Defendant, and to which both responded and produced documents, and all parties provided testimony;

1.7 WHEREAS, in preparation for mediation, the Parties also engaged in informal discovery, exchanging information and reviewing and analyzing extensive data made available by Defendant, which enabled Plaintiffs and the mediator to thoroughly evaluate Plaintiffs' claims and the claims of a potential settlement class, and the likely outcomes, risks and expense of pursuing litigation;

1.8 WHEREAS, the Parties attended an in-person mediation session with professional mediator Mark Rudy, Esq., where the Parties discussed settlement terms at length with the mediator and directly for some time after, before agreeing to the terms of this arm's-length Settlement;

1.9 WHEREAS, although the parties did not reach a settlement at mediation, negotiations continued at arms-length, and on October 6, 2020, counsel for both parties executed a Memorandum of Understanding that contained the preliminary terms of this Settlement Agreement.

1.10 WHEREAS, Plaintiffs and Class Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the damages that might be proven against Defendant in the Action. Plaintiffs and Class Counsel further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals. They also have considered the uncertain outcome and the risk of any litigation, especially in complex litigation such as the Action, as well as the difficulties and delays inherent in any such litigation. They are also mindful of the inherent challenges of proof and the strength of the defenses to the alleged claims, and therefore believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice as set forth herein, subject to the approval of the Court;

1.11 WHEREAS, Plaintiffs and Class Counsel, based on their own independent investigations and evaluations, have examined the benefits to be obtained under the terms of this Settlement Agreement, have considered the claims of Plaintiffs, the claims of Settlement Class Members, the risks associated with the continued prosecution of the Action, and the likelihood of success on the merits of the Action, and believe that, after considering all the circumstances, including the uncertainties surrounding the risk of further litigation and the defenses that defendant has asserted

1 and could assert, the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, in
2 the best interests of Plaintiffs and the Settlement Class, and confers substantial benefits upon the
3 Settlement Class;

4 1.12 WHEREAS, Plaintiffs warrant and represent that they are effecting this Settlement and
5 executing this Agreement after having received full legal advice as to their respective rights and have
6 had the opportunity to obtain independent counsel to review this Agreement;

7 1.13 WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
8 and any of the terms of this Agreement, and any documents filed in connection with the Settlement
9 shall not constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding,
10 or evidence of: (i) any wrongdoing, (ii) any violation of any statute or law, (iii) any liability on the
11 claims or allegations in the Action on the part of any Released Parties, or (iv) the propriety of certifying
12 a litigation class or pursuing representative relief under the PAGA in the Action or any other
13 proceeding; and shall not be used by any person for any purpose whatsoever in any legal proceeding,
14 including but not limited to arbitrations, and/or other civil and/or administrative proceedings, other
15 than a proceeding to enforce the terms of the Agreement. There has been no final determination by
16 any court as to the merits of the claims asserted by Plaintiffs against Defendant, nor has there been
17 any final determination as to whether PAGA representative claims may properly be pursued, other
18 than for settlement purposes only;

19 1.14 WHEREAS, for settlement purposes only, Defendant will stipulate to the certification
20 of class claims that are subject to the certification requirements of California Code of Civil Procedure
21 Section 382. Defendant disputes that certification beyond those claims already certified is proper for
22 the purposes of litigating the class claims proposed in or flowing from the claims asserted in the
23 Action;

24 1.15 WHEREAS, the Parties desire to compromise and settle all issues and claims that were
25 or could have been brought against defendant based on the facts alleged in the operative complaint,
26 including all claims brought on behalf of the putative class and PAGA representative basis in the
27 Action;
28

1 1.16 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
2 AGREED, by Plaintiffs for themselves and on behalf of the Settlement Class, and by Defendant that,
3 subject to the approval of the Court, the Action shall be settled, and compromised, and the Released
4 Claims shall be finally and fully compromised and settled as to the Released Parties, in the manner
5 and upon the terms and conditions hereafter set forth in this Agreement.

6 **II. DEFINITIONS**

7 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the
8 meanings set forth below:

9 2.1 “Active Settlement Periods” means the best approximation of the total number of
10 periods in which a Settlement Class Member received a payment via Subcontracting Concepts, Inc.
11 (“SCI”) (referred to internally by SCI as settlement payments – unrelated to this Settlement
12 Agreement), based on the records and data maintained by SCI, for each Settlement Class Member
13 from the time period between February 22, 2009 and the date of preliminary approval.

14 2.2 “Class Counsel” means Marlin & Saltzman LLP, Capstone Law APC, The Hamideh
15 Firm, P.C., and James Hawkins APLC.

16 2.3 “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s litigation and
17 resolution of the Action, and all claims resolved by this Settlement, as awarded by the Court, which
18 will be paid exclusively from the Total Settlement Amount, and may not exceed forty percent (40%)
19 of the Total Settlement Amount and (ii) all expenses and costs incurred by Class Counsel in litigation
20 and resolution of the Action, and all claims resolved by this Settlement, in the amount of \$225,000,
21 which will be paid exclusively from the Total Settlement Amount. To the extent that any amount of
22 the Class Counsel Award is not awarded by the Court, that amount shall be redistributed to the
23 Settlement Class Members pro rata as part of their Individual Settlement Payments.

24 2.4 “Class Information” means information regarding Settlement Class Members that will
25 in good faith be compiled from the records Subcontracting Concepts, Inc. (a third party provider
26 engaged by OnTrac to provide payment services to Class Members’ Regional Service Providers), and
27 provided to the Settlement Administrator. Class Information shall be provided in a Microsoft Excel
28 spreadsheet and shall include, if possible, for each Settlement Class Member: full name, last known

1 address, social security number, and Active Settlement Periods. Because Settlement Class Members’
2 private information is included in the Class Information, Class Counsel and the Settlement
3 Administrator shall maintain any Class Information received in confidence and shall use and disclose
4 Class Information only for purposes of this Settlement and for no other purpose, and pursuant to the
5 restrictions as described in Paragraph 5.4. Further, within the Settlement Administrator’s operations,
6 access shall be limited to those personnel with a need to use the Class Information as part of the
7 administration of the Settlement.

8 2.5 “Class Notice” means the notice of class action settlement to be provided to Settlement
9 Class Members, without material variation from the relevant portion of Exhibit A.

10 2.6 “Court” means the Los Angeles County Superior Court of California.

11 2.7 “Effective Date” means one (1) day after which both of the following events have
12 occurred: (i) the Court’s Final Approval order has been entered and (ii) the Court’s Final Approval
13 order and Judgment have become Final.

14 2.8 “Exclusion/Written Objection Deadline” means the final date by which a Settlement
15 Class Member may either (i) submit a written objection to any aspect of the Settlement, or (ii) request
16 to be excluded from the Settlement. The Exclusion/Written Objection Deadline shall be forty-five
17 (45) days after the Notice Date, and shall be specifically identified and set forth in the Preliminary
18 Approval Order and the Class Notice.

19 2.9 “Final” when referring to a judgment or order, means that (i) the judgment is a final,
20 appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on
21 which all times to appeal therefrom have expired (i.e., 60 calendar days from entry of judgment), or
22 (b) an appeal or other review proceeding of the judgment having been commenced, such appeal or
23 other review is finally concluded and no longer is subject to review by any court, whether by appeal,
24 petitions for rehearing or re-argument, petitions for re-hearing en banc, petitions for writ of certiorari,
25 or otherwise, and such appeal or other review has been finally resolved in such manner that affirms
26 the judgment order in its entirety, and remittitur has been issued.

27 2.10 “Final Approval” means the Court’s entry of a Final Approval order finally approving
28 this Settlement.

2.11 “Final Approval Hearing” means the hearing at or after which the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally approved by the Court.

2.12 “Individual Settlement Payment” means the amount payable from the Total Settlement Amount to each Settlement Class Member who does not opt out, which shall be issued as non-wages, for which an IRS Form 1099 shall issue if required. The Individual Settlement Payment(s) shall be calculated pursuant to Section V herein.

2.13 “Judgment” means the judgment to be entered in the Action on Final Approval of this Settlement.

2.14 “Legally Authorized Representatives” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed person responsible for handling the business affairs of a Settlement Class Member.

2.15 “Named Plaintiffs’ General Released Claims” means any and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including but not limited to those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation), and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys’ fees, costs or disbursements, against the Released Parties, including unknown claims covered by California Civil Code section 1542, as quoted below in Paragraph 9.4, by the Plaintiffs, arising during the period from the beginning of the Plaintiffs’ first interaction with any defendant to the date on which the Court enters the order of Final Approval of this Settlement, for any type of relief that can be released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or injunctive, declaratory or equitable relief, with the exception of any claims which cannot be released as a matter of law. Plaintiffs will generally release all known and unknown claims

1 against the Released Parties, and waive the application of section 1542 of the California Civil Code.
2 The claims released pursuant to this paragraph include but are not limited to the Settlement Class
3 Members' Released Claims, as well as any other claims under any provision of the Fair Labor
4 Standards Act, the California Labor Code, the California Code of Regulations, or any applicable
5 California Industrial Welfare Commission Wage Order(s), and claims under state or federal
6 discrimination statutes, including, without limitation the California Fair Employment and Housing
7 Act, California Government Code section 12940 *et seq.*; the California Constitution; Title VII of the
8 Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §
9 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, as amended; the Employee
10 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing
11 regulations and interpretive guidelines.

12 2.16 "Notice Date" means the date of the initial distribution of the Class Notice to Settlement
13 Class Members, as set forth in Section VI.

14 2.17 "Opt Out List" means the Court-approved list of all persons who timely and properly
15 request exclusion from the Settlement Class.

16 2.18 "PAGA Claims" means the Plaintiffs' representative claims seeking civil penalties
17 pursuant to PAGA, as alleged in the Action and based on all provisions of the Labor Code, Wage
18 Orders or any other statute or regulation identified in the Action to the fullest extent permitted by law.

19 2.19 "PAGA Payment" means a total payment of \$200,000 to settle all claims under the
20 PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to the PAGA
21 and 25% will be distributed to all Settlement Class Members, and considered penalties for tax reporting
22 purposes.

23 2.20 "Plaintiffs" means Thomas Lewis, Aurelio Sanchez, and Eliseo Leal.

24 2.21 "Plan of Allocation" means the plan for allocating the Total Settlement Amount
25 between and among Settlement Class Members as approved by the Court.

26 2.22 "Preliminary Approval Date" means the date that the Court enters the Preliminary
27 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii)
28 enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement

1 Class, an opportunity to submit timely and proper objections to the Settlement, and setting a hearing
2 on the fairness of the terms of Settlement, including approval of the Class Counsel Award.

3 2.23 “Preliminary Approval Order” means the order that Plaintiffs and Defendant will seek
4 from the Court, without material variation from Exhibit B. Entry of the Preliminary Approval Order
5 shall constitute preliminary approval of the Settlement Agreement.

6 2.24 “Released Claims” means (i) Settlement Class Members’ Released Claims and (ii)
7 Named Plaintiffs’ General Released Claims.

8 2.25 “Released Parties” means Defendant OnTrac, as well as Subcontracting Concepts, Inc.
9 (a third party provider designated by OnTrac to provide services to Class Members) and their
10 subsidiaries, officers, directors, members, partners, owners, shareholders, employees, former
11 employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers,
12 predecessors, successors, parent companies and organizations, insurers, and any and all other persons,
13 firms and corporations in which Defendant OnTrac and Subcontracting Concepts, Inc. may have an
14 interest.

15 2.26 “Service Awards” means the amounts approved by the Court to be paid to each of the
16 Plaintiffs, in addition to each Plaintiffs’ respective Individual Settlement Payment(s), in recognition
17 of their efforts in coming forward as named plaintiffs and as consideration for a full, general, and
18 comprehensive release of the Named Plaintiffs’ General Released Claims. The Service Awards
19 amount payable to Plaintiffs shall come exclusively from the Total Settlement Amount and are not to
20 exceed \$15,000 each. To the extent that any amount of the Service Awards are not awarded by the
21 Court, that amount will be redistributed pro rata to the Settlement Class Members as part of their
22 Individual Settlement Payments.

23 2.27 “Settlement” means the settlement of the Action between and among Plaintiffs and
24 Defendant, as set forth in this Settlement Agreement.

25 2.28 “Settlement Administrator” means CPT Group, Inc.

26 2.29 “Settlement Administrator Expenses” means the amount to be paid to the Settlement
27 Administrator exclusively from the Total Settlement Amount, including the total costs, expenses, and
28 fees of the Settlement Administrator. The amount is not to exceed \$40,000 for approximately 9,000

1 Settlement Class Members. To the extent that any amount of the Settlement Administrator Expenses
2 are not awarded by the Court, that amount will be redistributed pro rata to the Settlement Class
3 Members as part of their Individual Settlement Payments.

4 2.30 “Settlement Class” means all individuals who personally performed last-mile delivery
5 and pickup services for OnTrac in California, who were designated as independent contractors during
6 the Settlement Period. Excluded from the class definition are (1) individuals designated as Regional
7 Service Providers during the time they were designated as Regional Service Providers, (2) individuals
8 who have previously released claims arising from their alleged misclassification as independent
9 contractors.

10 2.31 “Settlement Class Member” means any member of the Settlement Class.

11 2.32 “Settlement Class Members’ Released Claims” means any and all present and past
12 claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of
13 any nature and description whatsoever, known or unknown, existing or potential, recognized now or
14 hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in
15 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation,
16 and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages,
17 penalties, interest, attorneys’ fees, costs, or disbursements) based on or reasonably related to the
18 conduct alleged in the Complaint during the Settlement Period, and specifically to claims pursuant to
19 California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5,
20 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432. 432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12,
21 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 et seq. (PAGA Claims),
22 and 3700 et seq.; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code
23 sections 17200 et seq.; and any other similar California state or federal law, for non-payment of wages,
24 minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage
25 statements, failure to provide workers’ compensation insurance, meal periods, rest breaks, final pay,
26 waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys’ fees,
27 declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil
28 penalties, equitable remedies, and/or pre- or post-judgment interest. “Settlement Class Members’

Released Claims” do not include claims that, as a matter of law cannot be released. The “Settlement Class Members’ Released Claims” are released from February 22, 2009 through preliminary approval of this Settlement.

2.33 “Settlement Class Period” means February 22, 2009 through preliminary approval of this Settlement.

2.34 “Total Settlement Amount” means Ten Million Five Hundred Thousand Dollars (\$10,500,000), for payment of all claims, which is the maximum amount that Defendant is obligated to pay under this Settlement Agreement under any circumstances in order to resolve and settle the Action, subject to Court approval. The Total Settlement Amount includes all costs and fees, including, but not limited to, the Class Counsel Award, Settlement Administrator Expenses, escrow costs and expenses, Service Awards, interest, and taxes and tax expenses.

2.35 “Void Date” means the date by which any checks issued to Settlement Class Members shall become void, *i.e.* on the 181st day after mailing.

III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR PRELIMINARY AND FINAL APPROVAL

3.1 Upon execution of this Settlement Agreement, Plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall include a proposed plan for sending of the Class Notice to Settlement Class Members within sixty (60) days after the Preliminary Approval Date (the Notice Date), and establishing a period of (45) days from the Notice Date within which any Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to the proposed Settlement or any part thereof, (iii) object to Class Counsel’s request for the Class Counsel Award and for the Service Awards to the Plaintiffs (the Exclusion/Written Objection Deadline).

3.2 The Parties stipulate to certification of the Settlement Class under California Code of Civil Procedure Section 382, for settlement purposes only, excluding the Settlement Class’s PAGA Claims. The Parties agree that this stipulation shall not be admissible in, and may not be used by any person for any purpose whatsoever in any legal proceeding, including but not limited to any

1 arbitrations and/or any civil and/or administrative proceedings, other than a proceeding to enforce the
2 terms of the Agreement, as further set forth in this Agreement.

3 3.3 Class Counsel agrees to keep any and all data and other financial and personal
4 information related to the Settlement Class in the strictest confidence, and shall not disclose that data.
5 Any such data provided to Class Counsel shall be treated as privileged mediation communications
6 under Cal. Evid. Code §§ 1115 *et seq.* and designated “Confidential—Attorneys’ Eyes Only,” except
7 to the extent absolutely necessary (as agreed between the Parties) for approval of the Settlement. Class
8 Counsel agrees to submit such necessary data and information to the Court under seal to the extent
9 appropriate under governing law.

10 3.4 The Parties stipulate to the form of, and agree to submit to the Court for its
11 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
12 Class Notice (Exhibit A); and [Proposed] Preliminary Approval Order (Exhibit B).

13 3.5 Solely for purposes of implementing this Agreement and effectuating the proposed
14 Settlement, the Parties agree and stipulate that:

15 3.5.1 The Court may enter the Preliminary Approval Order, without material
16 variation from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other
17 things, the Preliminary Approval Order shall grant leave to preliminarily certify the Settlement Class
18 for settlement purposes only; approve the Plaintiffs as class representatives, appoint Class Counsel to
19 represent the Settlement Class, and appoint the Settlement Administrator; approve the Class Notice,
20 and the class notice plan embodied in the Settlement Agreement, and approve them as consistent with
21 California Rules of Court 3.766(d) and 3.769(f) and due process; set out the requirements for disputing
22 the information upon which Settlement Class Members’ share of the Settlement will be calculated,
23 objecting to the Settlement, excluding Settlement Class Members who timely and properly request to
24 be excluded from the Settlement Class, all as provided in this Agreement; and provide that certification
25 and all actions associated with certification are undertaken on the condition that the certification and
26 other actions shall be automatically vacated and of no force or evidentiary effect if this Agreement is
27 terminated or disapproved, as provided in this Agreement.

1 3.6 Within 10 days of the Final Approval Date, Class Counsel will notify the LWDA of
2 the Preliminary Approval Order.

3 3.7 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval order
4 and a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this
5 Settlement and that, among other things:

6 3.7.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
7 consummation pursuant to the terms of the Settlement Agreement;

8 3.7.2 Finds that Class Counsel and Plaintiffs adequately represented the Settlement
9 Class for the purpose of entering into and implementing the Agreement;

10 3.7.3 Re-confirms the appointment of the Settlement Administrator and finds that the
11 Settlement Administrator has fulfilled its duties under the Settlement to date;

12 3.7.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
13 constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class
14 Members of the pendency of the Action, and their right to exclude themselves from or object to the
15 proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted
16 due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable
17 requirements of California Rules of Court 3.766(d) and 3.769(f), due process, and any other applicable
18 rules or law;

19 3.7.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
20 list of all Settlement Class Members who have timely and properly requested exclusion from the
21 Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval order and
22 Judgment;

23 3.7.6 Directs that the Final Approval order and Judgment shall be final and entered
24 forthwith;

25 3.7.7 Without affecting the finality of the Final Approval order and Judgment, directs
26 that the Court retains continuing jurisdiction over Plaintiffs, the Settlement Class, and Defendant as to
27 all matters concerning the administration, consummation, and enforcement of this Settlement
28 Agreement;

1 3.7.8 Adjudges that, as of the Final Approval Date, Plaintiffs, and all Settlement Class
2 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List
3 approved by the Court, and their Legally Authorized Representatives, heirs, estates, trustees,
4 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,
5 and/or anyone claiming through them or acting or purporting to act for them or on their behalf,
6 regardless of whether they have received actual notice of the proposed Settlement, have conclusively
7 compromised, settled, discharged, and released the Named Plaintiffs' General Released Claims (in the
8 case of Plaintiffs) and Settlement Class Members' Released Claims (in the case of the Settlement Class
9 Members) against Defendant and the Released Parties, and are bound by the provisions of this
10 Agreement;

11 3.7.9 Affirms that, notwithstanding the submission of a timely and proper request for
12 exclusion, Settlement Class Members will still be bound by the settlement and release of the PAGA
13 Claims under the Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) as
14 requests for exclusion do not apply to the PAGA Claims, and further affirms that any claim by the
15 LWDA for civil penalties pursuant to PAGA are also extinguished;

16 3.7.10 Declares this Agreement and the Final Approval order and Judgment to be
17 binding on, and have res judicata and preclusive effect as to all pending and future lawsuits or other
18 proceedings: (i) that encompass the Named Plaintiffs' General Released Claims and that are
19 maintained by or on behalf of Plaintiffs and/or their Legally Authorized Representatives, heirs, estates,
20 trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and
21 successors, and/or anyone claiming through them or acting or purporting to act for them or on their
22 behalf, and (ii) that encompass the Settlement Class Members' Released Claims and that are
23 maintained by or on behalf of any Settlement Class Member who has not been excluded from the
24 Settlement Class as provided in the Opt-Out List approved by the Court and/or their Legally
25 Authorized Representatives, heirs, estates, trustees, executors, administrators, principals,
26 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them
27 or acting or purporting to act for them or on their behalf, regardless of whether the Settlement Class
28 Member previously initiated or subsequently initiates individual litigation or other proceedings

1 encompassed by the Settlement Class Members' Released Claims, and even if such Settlement Class
2 Member never received actual notice of the Action or this proposed Settlement;

3 3.7.11 Determines that the Agreement and the Settlement provided for herein, and any
4 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or
5 construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-
6 liability or of the certifiability or non-certifiability of a litigation class, or that PAGA representative
7 claims may validly be pursued, or of any misrepresentation or omission in any statement or written
8 document approved or made by any Party; provided, however, that reference may be made to this
9 Agreement and the Settlement provided for herein in such proceedings as may be necessary to
10 effectuate the provisions of this Agreement, as further set forth in this Agreement;

11 3.7.12 Orders that the preliminary approval of the Settlement, certification of the
12 Settlement Class and final approval of the proposed Settlement, and all actions associated with them,
13 are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated
14 or disapproved in whole or in part by the Court, or by any appellate court and/or other court of review,
15 in which event the Agreement and the fact that it was entered into shall not be offered, received, or
16 construed as an admission or as evidence for any purpose, including but not limited to an admission
17 by any Party of liability or non-liability or of any misrepresentation or omission in any statement or
18 written document approved or made by any Party, or of the certifiability of a litigation class or the
19 appropriateness of maintaining a PAGA representative action, as further provided in this Settlement
20 Agreement;

21 3.7.13 Authorizes the Parties, without further approval from the Court, to mutually
22 agree to and adopt such amendments, modifications, and expansions of this Agreement, including all
23 Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval order and (ii)
24 do not limit the rights of Settlement Class Members; and

25 3.7.14 Contains such other and further provisions consistent with the terms of this
26 Settlement Agreement to which the Parties expressly consent in writing.

27 3.8 At the Final Approval Hearing and as a part of the final approval of this Settlement,
28 Class Counsel will also request approval of the Plan of Allocation set forth in Section V. Any

1 modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the
2 Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement
3 Agreement, or (iii) impose any obligation on the Defendant or any Released Party to increase the
4 consideration paid in connection with the Settlement.

5 3.9 At the Final Approval Hearing, Class Counsel may also request entry of an Order
6 approving the Class Counsel Award and the Service Awards to the Plaintiffs, which shall be paid
7 exclusively from the Total Settlement Amount and in accordance with the distribution plan described
8 in Section V. In no event shall any Released Party otherwise be obligated to pay for any attorneys'
9 fees and expenses or any Service Award. The disposition of Class Counsel's application for a Class
10 Counsel Award, and for the Service Award, is within the sound discretion of the Court and is not a
11 material term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that
12 such application be granted. Any disapproval or modification of such application by the Court shall
13 not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the
14 right to terminate the Settlement Agreement, or (iii) increase the consideration Defendant or any
15 Released Party pays in connection with the Settlement. Released Parties shall have no liability to
16 Class Counsel arising from any claim regarding the division of the Class Counsel Award between and
17 among Class Counsel or any other counsel representing Plaintiffs or the Settlement Class Members.

18 3.10 Within 10 days after entry of Judgment, Class Counsel will provide a copy of the
19 Judgment to the LWDA.

20 3.11 In no event shall Defendant or any Released Party be obligated to pay Settlement
21 Administrator Expenses beyond those provided for in this Agreement.

22 **IV. SETTLEMENT CONSIDERATION**

23 4.1 The total consideration for the Settlement from Defendant is the Total Settlement
24 Amount (\$10,500,000). The Total Settlement Amount is an "all in" number that includes, without
25 limitation, all monetary benefits and payments to the Settlement Class, Service Awards, Class Counsel
26 Award, Settlement Administrator Expenses, the PAGA Payment, and all claims for interest, fees, and
27 costs, with the sole exception of the employer-side employment taxes for the wage portion of the
28 settlement. Under no circumstances shall Defendant be required to pay anything more than the Total

1 Settlement Amount. In no event shall Defendant be liable for making any payments under this
2 Settlement, or for providing any relief to Settlement Class Members, before the deadlines set forth in
3 this Agreement.

4 4.2 The Total Settlement Amount was calculated with, and is premised on, the
5 understanding that there are approximately 8,750 Class Members eligible to participate in the
6 Settlement. If the number of Class Members stated in this paragraph increases by more than 7% of
7 this estimate, then the Total Settlement Amount will be increased by the same proportion above 7%.

8 4.3 Plaintiffs and all Settlement Class Members who receive any Individual Settlement
9 Payment and/or Service Award from the Total Settlement Amount expressly acknowledge that such
10 payments shall be considered non-wages for which an IRS Form 1099 will be issued, if required.
11 Plaintiffs and all Settlement Class Members who receive a payment of any kind from the Total
12 Settlement Amount agree to timely pay in full all of the federal, state, and municipal income taxes
13 owed on such payments.

14 4.4 The terms of this Agreement relating to the Service Awards and Class Counsel Award
15 were not negotiated by the Parties before full agreement was reached as to all other material terms of
16 the proposed Settlement, including, but not limited to, any terms relating to the relief to the Settlement
17 Class. Defendant agrees not to oppose a request for the Service Awards for Plaintiffs, as awarded by
18 the Court, up to a maximum of \$15,000 each. Plaintiffs and Class Counsel agree not to seek any
19 Service Award in excess of the above amount.

20 4.5 Class Counsel agrees not to seek an award from the Court in excess of forty percent
21 (40%) of the Total Settlement Amount in attorneys' fees nor in excess of \$225,000 in costs and
22 expenses. Defendant agrees not to oppose a request for attorneys' fees, costs and expenses so long as
23 it does not exceed the amounts set forth above. Any amount awarded as the Class Counsel Award
24 shall be inclusive of any and all amounts due to or claimed by any and all counsel representing
25 Plaintiffs. Released Parties and Settlement Class Members shall have no obligation regarding, or
26 liability for, allocation or payment of the Class Counsel Award. Class Counsel shall file any request
27 for attorneys' fees, costs and expenses and any request for Service Awards no later than 16 court days
28 before the Final Approval Hearing.

1 4.6 The Settlement Administrator shall wire each Class Counsel their respective share of
2 the Class Counsel Award from the Total Settlement Amount. Class Counsel shall provide the
3 Settlement Administrator notice of receipt of the Class Counsel Award. Released Parties shall have
4 no liability to Class Counsel or any other counsel for Plaintiffs or any Settlement Class Member arising
5 from any claim regarding the division of the Class Counsel Award.

6 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

7 5.1 Within thirty (30) calendar days of the Effective Date, Defendant shall provide the
8 Total Settlement Amount to the Settlement Administrator. Subject to Court approval, the Total
9 Settlement Amount shall be allocated to pay the Settlement Administrator Expenses; Plaintiffs'
10 Service Awards; the Class Counsel Award; seventy-five percent (75%) of the PAGA Payment to the
11 LWDA; and all remaining funds allocated to the Individual Settlement Payments to Settlement Class
12 Members who did not opt out.

13 5.2 To receive a payment from the Settlement, a Settlement Class Member must not have
14 submitted a request for exclusion from the Settlement. Settlement Class Members are not eligible to
15 receive any compensation from the Settlement other than the Individual Settlement Payment(s).

16 5.3 The amount of each Settlement Class Member's Individual Settlement Payment(s) will
17 be distributed from the Total Settlement Amount and calculated in direct proportion to SCI's best
18 estimate of each Settlement Class Member's Active Settlement Periods, as determined from the Class
19 Information provided to the Settlement Administrator by Defendant. Class Counsel will be permitted
20 to review and approve the calculation of settlement funds to be distributed, pursuant to the restrictions
21 in Paragraph 5.4. All Settlement Class Members will receive an Individual Settlement Payment, and
22 without the need to submit claims for payment.

23 5.4 The Settlement Administrator may provide Class Counsel with a version of the Class
24 List that includes solely a unique identifying number for each individual and their pay periods worked,
25 but not contain any Settlement Class Member's name, social security number, nor last known address
26 nor any other identifying information. In the event a dispute arises with respect to any Settlement
27 Class Member's data in connection with administration of the Settlement, the Settlement
28

1 Administrator is authorized to provide Class Counsel with the name, social security and last known
2 contact information of the Settlement Class Member who is the subject of the dispute.

3 5.5 In the event that any checks mailed to Settlement Class Members remain uncashed after
4 the Void Date, then any such funds shall be transmitted by the Settlement Administrator pursuant to
5 governing California law to the State of California Unclaimed Property Fund, to be held there in the
6 name of and for the benefit of such class members under California's escheatment laws.

7 5.6 At no point shall any amount from the Total Settlement Amount revert back to
8 Defendant.

9 5.7 The Settlement Administrator shall issue the Individual Settlement Payments from the
10 Total Settlement Amount to each Settlement Class Member who does not opt out. Each Individual
11 Settlement Payment shall be reported by the Settlement Administrator to the applicable governmental
12 authorities on IRS Form 1099s, if required. The portions allocated to Plaintiffs' Service Awards shall
13 also be reported on IRS Form 1099s. The Settlement Administrator shall be responsible for issuing
14 respective copies of IRS Form 1099s for the Plaintiffs and Settlement Class Members who received
15 and cashed their respective Individual Settlement Payments.

16 **VI. CLASS NOTICE PROCEDURES**

17 6.1 No more than fifteen (15) business days after entry of the Preliminary Approval Order,
18 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
19 sending the Class Notice to Settlement Class Members.

20 6.2 The Class Notice will include a statement to each Settlement Class Member containing
21 their Active Settlement Periods being used to calculate the amount of their Settlement Payment as
22 described in Paragraph 5.3, and inform Settlement Class Members of their right to request exclusion
23 from the Settlement, of their right to object to the Settlement, of their right to dispute the information
24 upon which their share of the Settlement will be calculated, and the claims to be released.

25 6.3 As set forth in the Class Notice, Settlement Class Members will be provided forty-five
26 (45) days after mailing of the Class Notice and accompanying statement to disagree with SCI's
27 calculation of their total Active Settlement Periods by providing documentation to the Settlement
28 Administrator. The Settlement Administrator shall review any documentation submitted by a

1 Settlement Class Member and consult with the Parties to determine whether an adjustment is
2 warranted. There will be a presumption that SCI's records are correct, absent evidence produced by
3 a Settlement Class Member to the contrary. The Settlement Administrator's determination of the
4 amount of any Settlement Class Member's Active Settlement Periods shall be binding upon the
5 Settlement Class Member and the Parties, and a Settlement Class Member's Individual Settlement
6 Payment will be calculated according to the Settlement Administrator's determination.

7 6.4 No more than sixty (60) days after entry of the Preliminary Approval Order, provided
8 Defendant timely complied with its obligation in Paragraph 6.1, the Settlement Administrator shall
9 send a copy of the Class Notice by U.S. mail to each potential Settlement Class Member (the Notice
10 Date).

11 6.5 If any Class Notice sent via U.S. mail to any potential Settlement Class Member is
12 returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall
13 forward the postal mailing to that address. If the Settlement Administrator is not provided a
14 forwarding address, the Settlement Administrator shall make a good-faith search of an appropriate
15 database, as described in Paragraph 6.6, and postal mailings shall be resent, re-mailed, and/or
16 forwarded to any new postal mail address obtained through the methods described in Paragraph 6.6.
17 In the event that any Class Notice is returned as undeliverable a second time, no further efforts shall
18 be required. The Settlement Administrator shall maintain a log detailing the instances Class Notices
19 are returned as undeliverable.

20 6.6 Before any mailing to an address besides that listed in the Class Information, the
21 Settlement Administrator shall make a good-faith attempt to obtain the most-current names and postal
22 mail addresses for all potential Settlement Class Members to receive such postal mail, including (1)
23 cross-checking the names and/or postal mail addresses it received from SCI, (2) reviewing the
24 addresses with the National Change of Address Database and (3) performing further reasonable
25 searches (e.g., through Lexis/Nexis) for more-current names and/or postal mail addresses for
26 Settlement Class Members. All Settlement Class Members' names and postal mail addresses obtained
27 through these sources shall be protected as confidential and not used for purposes other than the notice
28 and administration of this Settlement. The address determined by the Settlement Administrator as the

1 current mailing address through this process shall be presumed to be the best mailing address for the
2 applicable Settlement Class Member.

3 6.7 The Parties agree that the procedures set forth in this Section constitute reasonable and
4 the best practicable notice under the circumstances and an appropriate and sufficient effort to locate
5 current addresses for Settlement Class Members such that no additional efforts to do so shall be
6 required.

7 6.8 At least twenty-one (21) days before the Final Approval Hearing, the Settlement
8 Administrator shall prepare a declaration of due diligence and proof of dissemination with regard to
9 the mailing of the Class Notice, and any attempts by the Settlement Administrator to locate Settlement
10 Class Members, its receipt of valid requests for exclusion, and its inability to deliver the Class Notice
11 to Settlement Class Members due to invalid addresses (“Due Diligence Declaration”), to Class
12 Counsel and counsel for Defendant for presentation to the Court. Class Counsel shall be responsible
13 for filing the Due Diligence Declaration with the Court.

14 6.9 If any individual whose name does not appear in the Class Information that SCI
15 provides the Settlement Administrator (and who has not previously opted out of the Settlement Class),
16 believes that they are a Settlement Class Member, they shall have the opportunity to dispute their
17 exclusion from the Settlement Class, prior Final Approval. If an individual believes they are a
18 Settlement Class Member, they must notify the Settlement Administrator within a reasonable amount
19 of time after the Notice Date, but under no circumstances after Final Approval. The Parties will meet
20 and confer regarding any such individuals in an attempt to reach an agreement as to whether any such
21 individual should be regarded as a Settlement Class Member. If the Parties so agree, the Settlement
22 Administrator will provide a Class Notice to the individual, and treat the individual as a Settlement
23 Class Member for all other purposes. Such an individual will have all of the same rights as any other
24 Settlement Class Member under this Agreement.

25 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

26 7.1 Settlement Class Members (with the exception of Plaintiffs) may opt out of the
27 Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class must
28 submit timely, written requests for exclusion. To be effective, such a request must include the

1 Settlement Class Member's name, address, and telephone number; a clear and unequivocal statement
2 that the Settlement Class Member wishes to be excluded from the Settlement Class; and the signature
3 of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the
4 address provided in the Class Notice and must be postmarked no later than the Exclusion/Written
5 Objection Deadline. The date of the postmark shall be the exclusive means used to determine whether
6 a request for exclusion has been timely submitted. Requests for exclusion must be exercised
7 individually by the Settlement Class Member. Attempted collective group, class, or subclass requests
8 for exclusions shall be ineffective and disregarded by the Settlement Administrator.

9 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
10 receives and provide copies of the log and all such requests for exclusion to Class Counsel and counsel
11 for Defendant, as requested.

12 7.3 The Settlement Administrator shall prepare a list of all persons who timely and properly
13 requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final Approval
14 Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

15 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by
16 the Court shall be bound by this Agreement, and will release the Settlement Class Members' Released
17 Claims, even if they never received actual notice of the Action or this proposed Settlement.

18 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a request
19 for exclusion was timely and properly submitted. The Settlement Administrator's decision shall be
20 final, binding, and nonappealable.

21 7.6 Plaintiffs agree not to request exclusion from the Settlement Class.

22 7.7 Settlement Class Members may object to or opt out of the Settlement, but may not do
23 both. Any Settlement Class Member who submits a timely and proper request for exclusion may not
24 file an objection to the Settlement or receive an Individual Settlement Payment, and shall be deemed
25 to have waived any rights or benefits under the Settlement Agreement. If a Settlement Class Member
26 files both an objection and a valid and timely request for exclusion, the request for exclusion will
27 override the objection, and the objection shall therefore be ignored.
28

1 7.8 Notwithstanding the submission of a timely request for exclusion, Class Members will
2 still be bound by the settlement and release of the PAGA Claims or remedies under the Final Judgment
3 pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to
4 the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

5 **VIII. PROCEDURES FOR OBJECTIONS**

6 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or
7 adequacy of this Agreement or the proposed Settlement must (1) provide to the Settlement
8 Administrator (who shall forward it to Class Counsel and counsel for Defendant), a timely statement
9 of the objection, as set forth below, or (2) appear in person at the Final Approval Hearing to make an
10 objection.

11 8.2 To be timely, a written objection must be mailed to the Settlement Administrator, and
12 postmarked no later than the Exclusion/Written Objection Deadline. The date of the postmark on the
13 return-mailing envelope shall be the exclusive means used to determine whether objection has been
14 timely submitted.

15 8.3 A written objection must contain at least the following: (i) the objector's full name,
16 address, telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the specific
17 legal and factual basis for each objection argument; and (iv) a statement whether the objecting person
18 or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if
19 through counsel, a statement identifying that counsel by name, bar number, address, and telephone
20 number. All objections shall be signed by the objecting Settlement Class Member, even if the
21 Settlement Class Member is represented by counsel.

22 8.4 The right to object to the proposed Settlement must be exercised individually by a
23 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be
24 ineffective and disregarded.

25 8.5 Any Settlement Class Member who does not file a timely written objection in
26 accordance with this Section shall maintain the right to voice any objections at the Final Approval
27 Hearing. Any Settlement Class Member who does not file a timely written objection in accordance
28 with this Section, nor objects at the Final Approval Hearing shall be forever barred from making any

1 objection to the proposed Settlement, the Plan of Allocation, the Class Counsel Award and the Service
2 Award. Settlement Class Members who object to the proposed Settlement shall remain Settlement
3 Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent
4 remedy against Defendant and the Released Parties.

5 8.6 To the extent any Settlement Class Member objects to the proposed Settlement, and
6 such objection is overruled in whole or in part, such Settlement Class Member will be forever bound
7 by the Final Approval order and Judgment.

8 8.7 It shall be Class Counsel's sole responsibility to respond to any objections made with
9 respect to any application for the Class Counsel Award and Service Award.

10 **IX. RELEASES**

11 9.1 The Released Claims against each and all of the Released Parties shall be released
12 (without an award of costs to any party other than as provided in this Agreement) upon entry of the
13 Final Approval order and Judgment.

14 9.2 As of the Final Approval Date, Plaintiffs, and all Settlement Class Members who have
15 not been excluded from the Settlement Class as provided in the Opt-Out List, individually and on
16 behalf of their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators,
17 representatives, agents, successors, and assigns, and anyone claiming through them or acting or
18 purporting to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not
19 to sue each and all of the Released Parties from each and all of the Named Plaintiffs' General Released
20 Claims (in the case of the Plaintiffs) and the Settlement Class Members' Released Claims (in the case
21 of the Settlement Class Members who have not been excluded from the Settlement Class as provided
22 in the Opt-Out List), and by operation of the Final Judgment shall have fully and finally released,
23 relinquished, and discharged all such claims against each and all of the Released Parties; and they
24 further agree that they shall not now or hereafter initiate, maintain, or assert any Named Plaintiffs'
25 General Released Claims (in the case of Plaintiffs) and any Settlement Class Members' Released
26 Claims (in the case of the Settlement Class Members who have not been excluded from the Settlement
27 Class as provided in the Opt-Out List), against the Released Parties in any other court action or before
28 any administrative body, tribunal, arbitration panel, or other adjudicating body. Without in any way

1 limiting the scope of the releases described in Paragraphs 2.15, 2.25, and 2.32, as well as the remainder
2 of this Section, this release covers, without limitation, any and all claims for attorneys' fees, costs or
3 disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement
4 Class Members, or by Plaintiffs or Settlement Class Members, or any of them, in connection with or
5 related in any manner to the Action, the Settlement of the Action, the administration of such
6 Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

7 9.3 As of the Final Approval Date, Plaintiffs and all Settlement Class Members who have
8 not been excluded from the Settlement Class as provided in the Opt-Out List shall be permanently
9 barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any
10 federal or state court or tribunal any and all Named Plaintiffs' General Released Claims (in the case
11 of Plaintiffs) and any Settlement Class Members' Released Claims (in the case of the Settlement Class
12 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List),
13 arising during the Settlement Class Period, as further provided in Paragraphs 2.15, 2.25, and 2.32, as
14 well as this Section.

15 9.4 Plaintiffs expressly acknowledge that they are familiar with principles of law such as
16 Section 1542 of the California Civil Code, which provides:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
19 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
20 **RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
21 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
22 **DEBTOR OR RELEASED PARTY.**

23 9.5 With respect to the Named Plaintiffs' General Released Claims, as described in
24 Paragraph 2.15, Plaintiffs shall be deemed to have expressly, knowingly, and voluntarily waived and
25 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may
26 otherwise have had pursuant to Section 1542 of the California Civil Code and all similar federal or
27 state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable herein. In
28 connection with the release, Plaintiffs acknowledge that they are aware that they may hereafter
discover claims presently unknown and unsuspected or facts in addition to or different from those
which they now know or believe to be true with respect to matters released herein. Nevertheless,

1 Plaintiffs acknowledge that a portion of the consideration received herein is for a release with respect
2 to unknown damages and complaints, whether resulting from known injuries and consequences or
3 from unknown injuries or unknown consequences of known or unknown injuries, and state that it is
4 the intention of Plaintiffs in agreeing to this release to fully, finally, and forever to settle and release
5 all matters and all claims that exist, hereafter may exist, or might have existed (whether or not
6 previously or currently asserted in any action), constituting Named Plaintiffs' General Released
7 Claims.

8 9.6 Plaintiffs further acknowledge, agree, and understand that: (i) each has read and
9 understands the terms of this Agreement; (ii) each has been advised in writing to consult with an
10 attorney before executing this Agreement; and (iii) each has obtained and considered such legal
11 counsel as they deem necessary.

12 9.7 Subject to Court approval, the Plaintiffs, and all Settlement Class Members to the extent
13 they have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound
14 by this Settlement Agreement, and all of their claims shall be released, even if they never received
15 actual notice of the Action or this Settlement.

16 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

17 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties
18 and subject to the supervision, direction, and approval of the Court, shall calculate the allocation of
19 and oversee the distribution of the Total Settlement Amount.

20 10.2 The Total Settlement Amount shall be applied as follows:

21 10.2.1 To pay the total costs, expenses, and fees of the Settlement Administrator
22 incurred in connection with providing Class Notice to potential Settlement Class Members, and the
23 management and distribution of the Total Settlement Amount to Settlement Class Members, not to
24 exceed \$40,000;

25 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiffs'
26 Service Awards based on contributions and time expended assisting in the litigation, up to a maximum
27 of \$15,000 each for Thomas Lewis, Aurelio Sanchez, and Eliseo Leal;
28

1 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class
2 Counsel Award (up to, but not to exceed, 40% of the Total Settlement Amount (\$10,500,000) and
3 reimbursement of litigation costs not to exceed \$225,000 as ordered by the Court;

4 10.2.4 Subject to the approval and further order(s) of the Court, to distribute 75% of
5 the PAGA Payment to the LWDA and 25% of the PAGA Payment to the Settlement Class Members
6 as part of each Settlement Class Members' Individual Settlement Payment(s), with the amount to be
7 distributed to each Settlement Class Member determined proportionately to their Individual Settlement
8 Payment(s);

9 10.2.5 After the Effective Date and subject to the approval and further order(s) of the
10 Court, to distribute the Individual Settlement Payments from the Total Settlement Amount for the
11 benefit of the Settlement Class pursuant to Settlement Agreement, or as otherwise ordered by the
12 Court.

13 10.3 Within sixty (60) days of the Effective Date, the Class Counsel Award (Four Million
14 Two Hundred Thousand Dollars (\$4,200,000)), the entirety of Class Counsel's litigation costs as
15 approved by the Court, and the Service Awards approved by the Court (up to Fifteen Thousand Dollars
16 (\$15,000) each for Thomas Lewis, Aurelio Sanchez, and Eliseo Leal), and the Settlement
17 Administrator Expenses (up to \$40,000), shall be made by the Settlement Administrator from the
18 amount provided to it by Defendant.

19 10.4 The Settlement Administrator shall use reasonable efforts to disburse the Individual
20 Settlement Payments to Settlement Class Members who did not timely opt out, pursuant to the Plan of
21 Allocation.

22 10.5 If any portion of the Total Settlement Amount is not successfully distributed to
23 Settlement Class Members (*i.e.* checks are not cashed or checks are returned as undeliverable), then
24 after the Void Date, the Settlement Administrator shall void the check and shall direct such unclaimed
25 funds pursuant to governing California law to the State of California Unclaimed Property Fund, to be
26 held there in the name of and for the benefit of such class members under California's escheatment
27 laws.
28

1 10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court shall
2 be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein,
3 and the Judgment with respect to all Settlement Class Members' Released Claims.

4 10.7 Payment from the Total Settlement Amount made pursuant to and in the manner set
5 forth herein shall be deemed conclusive of compliance with this Settlement Agreement as to all
6 Settlement Class Members.

7 10.8 No Settlement Class Member shall have any claim against the Plaintiffs, Class Counsel,
8 or the Settlement Administrator based on distributions made substantially in accordance with this
9 Settlement Agreement and/or orders of the Court. No Settlement Class Member shall have any claim
10 against any Released Party or its counsel relating to distributions made under this Settlement.

11 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
12 **SETTLEMENT AGREEMENT**

13 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
14 or does not enter the Final Approval order and Judgment on the terms described herein, or if the Court
15 enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is
16 vacated, modified in any way, or reversed, or if the Final Approval order does not otherwise become
17 Final, then this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their
18 sole discretion no later than thirty (30) days from the date such ruling becomes Final, provide written
19 notice to all other Parties hereto of their intent to proceed with the Settlement under the terms of the
20 Judgment as it may be modified by the Court or any appellate court.

21 11.2 No later than ten (10) business days after the Exclusion/Written Objection Deadline,
22 the Settlement Administrator shall provide to counsel for Defendant the Opt-Out List together with
23 copies of the opt-out requests. Notwithstanding any other provision of this Settlement Agreement, if
24 more than seven percent (7%) of Settlement Class Members exercise their right to opt out of the
25 Settlement, Defendant at its sole and absolute discretion may elect to rescind and revoke the entire
26 Settlement Agreement by sending written notice that it revokes the Settlement pursuant to this
27 paragraph to Class Counsel within ten (10) business days following receipt of the Opt-Out List. If
28 Defendant exercises its right of revocation, it will be responsible for all Settlement Administrator

1 Expenses incurred to the date of revocation. In the event that: (i) the Settlement is not approved, is
2 overturned, or is modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii)
3 this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then:
4 (a) the Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-Out
5 List, and all documents exchanged and filed in connection with the Settlement shall be treated as
6 privileged mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall
7 be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective
8 or enforceable, with the exception of this paragraph, which shall remain effective and enforceable; (c)
9 the parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to execution
10 of this Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in
11 connection with the Settlement, including the certification of the Settlement Class, shall be vacated
12 without prejudice to any party's position on any issue, in the Action or any other action, and the parties
13 shall be restored to their litigation positions existing on the date of execution of this Agreement; and
14 (e) the parties shall proceed in all respects as if the Settlement Agreement and related documentation
15 and orders had not been executed, and without prejudice in any way from the negotiation or fact of
16 the Settlement or the terms of the Settlement Agreement. The Settlement Agreement, the Settlement,
17 all documents, orders, and evidence relating to the Settlement, the fact of their existence, any of their
18 terms, any press release or other statement or report by the Parties or by others concerning the
19 Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings,
20 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
21 the Settlement shall not be admissible in any proceeding, and shall not be offered, received, or
22 construed as evidence of a presumption, concession, or an admission of liability, of the certifiability
23 of a litigation class, or of any misrepresentation or omission in any statement or written document
24 approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of the
25 Action or any other action or proceedings. Plaintiffs, Class Counsel and the Settlement Administrator
26 shall return to counsel for Defendant all copies of Class Information and Opt-Out Lists and shall not
27 use or disclose the Class Information or Opt-Out List for any purpose or in any proceeding.
28

1 11.3 Defendant does not agree or consent to certification of the Settlement Class for any
2 purpose other than to effectuate the Settlement of the Action. Further, Defendant does not agree or
3 consent that the Action could properly be maintained as a PAGA representative action for any purpose
4 other than to effectuate the Settlement of the Action. If this Settlement Agreement is terminated
5 pursuant to its terms, or the Effective Date for any reason does not occur, all Orders certifying the
6 Settlement Class or establishing the Action as a PAGA representative action only for purposes of
7 effecting this Settlement Agreement, and all preliminary and/or final findings regarding the Settlement
8 Class certification order, shall be automatically vacated upon notice to the Court, the Action shall
9 proceed as to the original class certified on January 18, 2019, and the Action shall revert nunc pro tunc
10 to the procedural status quo as of the date and time immediately before the execution of the Settlement
11 Agreement, in accordance with this Settlement Agreement.

12 **XII. ADDITIONAL PROVISIONS**

13 12.1 All of the Exhibits to this Agreement are an integral part of the Settlement and are
14 incorporated by reference as though fully set forth herein.

15 12.2 “Plaintiffs and Class Counsel acknowledge that an adequate factual record has been
16 established that supports the Settlement, and for settlement purposes only, hereby waive their right to
17 conduct further discovery except as ordered by the Court.

18 12.3 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
19 days. In the event any date or deadline set forth in this Agreement falls on a weekend or California
20 court legal holiday, such date or deadline shall be on the first business day thereafter.

21 12.4 This Agreement constitutes the full and complete agreement of the Parties hereto, and
22 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be
23 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
24 successors-in-interest.

25 12.5 The Parties reserve the right, subject to the Court’s approval, to make any reasonable
26 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such
27 extensions must be in writing to be enforceable.

1 12.6 The Settlement Agreement, the Settlement, the fact of the Settlement's existence, any
2 of terms of the Settlement Agreement, any press release or other statement or report by the Parties or
3 by others concerning the Settlement Agreement or the Settlement, and any negotiations, proceedings,
4 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
5 the Settlement may not be used as evidence of any waiver of, unenforceability of, or as a defense to
6 any OnTrac or SCI arbitration agreement.

7 12.7 The Released Parties shall have the right to file the Settlement Agreement, the Final
8 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
9 action that may be brought against them in order to support a defense or counterclaim based on
10 principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
11 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12 12.8 The Parties to the Settlement Agreement agree that the Total Settlement Amount and
13 the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
14 resulted from an arm's-length mediation session facilitated by Mark Rudy, Esq., and subsequent
15 discussions between the Parties, and reflect a settlement that was reached voluntarily based upon
16 adequate information and sufficient discovery and after consultation with experienced legal counsel.

17 12.9 Plaintiffs and Class Counsel have concluded that the Settlement set forth herein
18 constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs asserted against
19 defendant, including the claims on behalf of the Settlement Class, and that it promotes the best interests
20 of the Settlement Class.

21 12.10 To the extent permitted by law, all agreements made and orders entered during the
22 course of the Action relating to the confidentiality of information shall survive this Settlement
23 Agreement.

24 12.11 The waiver by one Party of any breach of this Settlement Agreement by any other Party
25 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

26 12.12 This Settlement Agreement constitutes the entire agreement among the Parties, and no
27 representations, warranties, or inducements have been made to any Party concerning this Settlement
28 Agreement, other than the representations, warranties, and covenants contained and memorialized in

1 this Settlement Agreement. In the event that the Addendum and therefore the Exhibits are never
2 finalized, the Parties will not be relieved in any way of their duties, obligations, and burden under the
3 Settlement Agreement. The Settlement Agreement shall bind the Parties upon execution, regardless
4 of whether the Addendum has also been executed.

5 12.13 This Settlement Agreement may be executed in one or more counterparts. All executed
6 counterparts and copies thereof shall be deemed to be one and the same instrument.

7 12.14 The Parties hereto and their respective counsel agree that they will use their best efforts
8 to obtain all necessary approvals of the Court required by this Settlement Agreement.

9 12.15 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
10 successors and assigns of the Parties hereto, including any and all Released Parties and any
11 corporation, partnership, or other entity into or with which any Released Party hereto may merge,
12 consolidate, or reorganize.

13 12.16 This Settlement Agreement shall not be construed more strictly against one Party than
14 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it
15 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement,
16 all Parties hereto have contributed substantially and materially to the preparation of the Settlement
17 Agreement.

18 12.17 Except where this Settlement Agreement itself provides otherwise, all terms,
19 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied
20 upon by the Parties in entering into this Settlement Agreement.

21 12.18 This Settlement Agreement shall be governed by California law. Any action based on
22 this Settlement Agreement, or to enforce any of its terms, shall be venued in Los Angeles Superior
23 Court, which shall retain jurisdiction over all such disputes. All Parties to this Settlement Agreement
24 shall be subject to the jurisdiction of Los Angeles County Superior Court for all purposes related to
25 this Settlement Agreement. This paragraph relates solely to the law governing this Settlement
26 Agreement and any action based thereon, and nothing in this paragraph shall be construed as an
27 admission or finding that California law applies to the Released Claims of any Plaintiff or Settlement
28 Class Members who reside outside of the state.

1 12.19 The Court shall retain continuing and exclusive jurisdiction over the Parties to this
2 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
3 Agreement.

4 12.20 The headings used in this Settlement Agreement are for the convenience of the reader
5 only, and shall not affect the meaning or interpretation of this Settlement Agreement.

6 12.21 In construing this Settlement Agreement, the use of the singular includes the plural
7 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

8 12.22 Each Party to this Settlement Agreement warrants that he, she, they, or it is acting upon
9 independent judgment and upon the advice of counsel, and not in reliance upon any warranty or
10 representation, express or implied, of any nature of any kind by any other Party, other than the
11 warranties and representations expressly made in this Settlement Agreement.

12 12.23 Each counsel signing this Settlement Agreement on behalf of their clients who are
13 unable to sign the Agreement on the date that it is executed by other Parties represents that such
14 counsel is fully authorized to sign this Settlement Agreement on behalf of their clients; provided,
15 however, that all Parties who have not executed this Agreement on the date that it is executed by the
16 other Parties shall promptly thereafter execute this Agreement and in any event no later than one (1)
17 week after the Agreement has been executed by counsel.

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Dated: 2/19/2021, 2021

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Thomas Lewis
By: E4111048F043431...
THOMAS LEWIS
PLAINTIFF

Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021

By: _____
ELISEO LEAL
PLAINTIFF

Dated: _____, 2021

By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: _____, 2021

By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: _____, 2021

By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: _____, 2021

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THOMAS LEWIS
PLAINTIFF

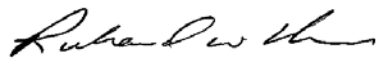
Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021

By: _____
ELISEO LEAL
PLAINTIFF

Dated: _February 19, 2021

By:  _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: _____, 2021

By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: _____, 2021

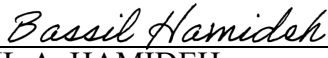
By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: February 22, 2021

By: 
RAUL PEREZ
MELISSA GRANT
BRANDON BROUILLETTE
CAPSTONE LAW, APC
Attorneys for Plaintiff
THOMAS LEWIS and AURELIO
SANCHEZ

Dated: February 22, 2021

By: 
BASSIL A. HAMIDEH
THE HAMIDEH FIRM, P.C.
Attorneys for Plaintiffs
THOMAS LEWIS and AURELIO
SANCHEZ

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Exhibit A

Express Messenger Systems Wage and Hour Cases, No. JCCP 4789
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

To: All individuals who personally performed last-mile delivery and pickup services for OnTrac (“Defendant”) in California at any time from February 22, 2009 to [the date of Preliminary Approval], and who were designated as independent contractors (“Class Members”). Excluded this group are individuals designated as Regional Service Providers during the time they were designated as Regional Service Providers.

On _____, the Honorable Kenneth R. Freeman of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.** All checks will be negotiable for 180 days—checks that are not cashed within 180 days will be paid to the California State Controller to be deposited in the Unclaimed Property Fund in the Class Members’ name.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 __.m. on _____, 2021 in Department 10 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. You are not required to attend the hearing, but if you wish to attend, the Court’s preference is that you attend the hearing telephonically (remotely), which can be set up through LA Court Connect (www.lacourt.org/lacc/). A prescheduled appointment is currently necessary to review any documents in the clerk’s office. Please see [www.lacourt.org](http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf) for up-to-date safety measures as they may change, and also see http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf for more information about the Court’s social distancing protocols.

Summary of the Litigation

Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal, on their behalf and on behalf of other current and former service providers, allege that Defendant violated California state labor laws as a result of its alleged failure to classify Class Members as non-exempt employees. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. Following years of negotiations, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$10,500,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$15,000, each, to Thomas Lewis, Aurelio Sanchez, and Eliseo Leal for

their services on behalf of the class and for general releases of all claims arising out of their relationship with Defendant; (3) \$4,200,000 in attorneys' fees and up to \$225,000 in litigation costs and expenses; (4) a \$150,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$_. After deducting the Class Representative Enhancement Payments, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately \$ will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Each Class Member's settlement payment will be based on the number of payments each Class Member received during the period from February 22, 2009 to the date of Preliminary Approval ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) Defendant will calculate the total number of periods in which a Class Member received a payment via Subcontracting Concepts, Inc. ("SCI"), based on the records and data maintained by SCI, for each Class Member from the time period between February 22, 2009 and [the date of Preliminary Approval] ("Active Settlement Periods").
- (b) Each Class Member's share of the Net Settlement Amount will be calculated according to the following formula: $\text{Class Member's Active Settlement Periods} \div \text{Entire Class' Active Settlement Periods} \times \text{Net Settlement Amount}$.
- (c) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Defendant's records, you worked during a total of ____ Active Settlement Periods. Accordingly, your estimated payment is approximately \$ _____. If you believe the information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute. All disputes should be postmarked or faxed on or before [insert date of Response Deadline] to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, the Individual Settlement Payment will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Released Claims"): Any and all present and past claims, actions, demands, causes of action, suits, debts, obligations, damages, rights

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) based on or reasonably related to the conduct alleged in the Complaint during the Settlement Period, and specifically to claims pursuant to California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432, 432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 et seq. (PAGA Claims), and 3700 et seq.; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code sections 17200 et seq.; and any other similar California state or federal law, for non-payment of wages, minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage statements, failure to provide workers' compensation insurance, meal periods, rest breaks, final pay, waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest. "Settlement Class Members' Released Claims" do not include claims that, as a matter of law cannot be released. The "Settlement Class Members' Released Claims" are released from February 22, 2009 through [preliminary approval of this Settlement].

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature (even if you have counsel), address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked not later than _____, 2021. If you submit a request for exclusion which is not postmarked by _____, 2021, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not give up any legal rights, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement.

Written objections must provide: (1) your full name, signature (even if you have counsel), address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than _____ 2021. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Los Angeles and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Stanley D Saltzman Marlin & Saltzman, LLP 29800 Agoura Road, Suite 210 Agoura Hills, CA 91301 Phone: 1 (818) 991-8080	Raul Perez Capstone Law APC 1875 Century Park E., Suite 1000 Los Angeles, CA 90067 Phone: 1 (855) 588-9779
Bassil A. Hamideh The Hamideh Firm, P.C. 1801 Century Park E., Suite 2400 Los Angeles, CA 90067 Phone: 1 (855) 588-9779	James R. Hawkins James Hawkins, APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Phone: 1 (949) 387-7200

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT’S ATTORNEYS WITH INQUIRIES.

Exhibit B

MARLIN & SALTZMAN, LLP
Stanley D Saltzman, Esq. (SBN 90058)
Stephen P. O'Dell, Esq. (SBN 132279)
29800 Agoura Road, Suite 210
Agoura Hills, California 91301
Telephone: (818) 991-8080
Facsimile: (818) 991-8081
ssaltzman@marlinsaltzman.com
sodell@marlinsaltzman.com

Class Counsel

CAPSTONE LAW APC
Raul Perez (SBN 174687)
Melissa Grant (SBN 205633)
Brandon Brouillette (SBN 273156)
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396
Raul.Perez@capstonelawyers.com
Melissa.Grant@capstonelawyers.com
Brandon.Brouillette@capstonelawyers.com

Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

2 Bassil A. Hamideh (SBN: 261233)
3 THE HAMIDEH FIRM, P.C.
4 1801 Century Park East, Suite 2400
5 Los Angeles, California 90067
6 Telephone: (310) 556-9687
7 Facsimile: (310) 733-5699
8 bhamideh@hamidehfirm.com

9 Class Counsel

10 James R. Hawkins, Esq.
11 Gregory E. Mauro, Esq.
12 JAMES HAWKINS, APLC
13 9880 Research Drive, Suite 200
14 Irvine, California 92618
15 Tel: (949) 387-7200
16 Fax: (949) 387-6676
17 james@jameshawkinsaplc.com
18 greg@jamshawkinsaplc.com

19 Class Counsel

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1. This Order incorporates by reference the Settlement Agreement, and unless indicated otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement Agreement.

3. The class action settlement set forth in the Settlement Agreement, entered into among the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the range of reasonableness, to be the product of arm's-length and informed negotiations, to treat all Class Members fairly, and to be presumptively valid, subject only to any objections that may be raised at or before the final approval hearing.

5. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the action.

6. The Court preliminarily approves the Settlement Agreement, including all the terms and conditions set forth therein and the Class Settlement Amount and allocation of payments.

7. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendant, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

8. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

9. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

10. The Court appoints Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal as the representatives for the Settlement Class conditionally certified by this Order.

11. The Court appoints Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

12. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

13. The following dates shall govern for purposes of this Settlement:

Date	Event
April 7, 2021 (or not later than 15 business days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class Information to the Settlement Administrator.
May 24, 2021 (or not later than 60 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.

Date	Event
July 8, 2021 (or not later than 45 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
July 23, 2021	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.
August 17, 2021 at 11:00 a.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.

14. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Kenneth R. Freeman
Los Angeles Superior Court Judge

Exhibit 2

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty-five seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshall's of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- Capstone has made important contributions to consumer protection law. In *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), Capstone represented plaintiffs in a major decision holding that the right to seek public injunctive relief under the state's consumer protection laws cannot be waived and that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public. In *Nguyen v. Nissan N.A.*, 726 F.3d 811 (9th Cir. 2019), Capstone attorneys reversed a denial of class certification, making law that clarified the use of "benefit of the bargain" damages models in consumer class actions.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.). In *Vorise v. 24 Hour Fitness USA, Inc.*, No. C 15-02051 (Contra Costa Super. Ct.), Capstone and co-counsel negotiated an \$11 million PAGA settlement on behalf of over 36,000 employees for Labor Code violations.
- Capstone has an established practice in automotive defect class actions and is currently appointed sole class counsel, following contested class certification, in *Victorino v. FCA US, LLC*, No. 16-1617-GPC, 2019 WL 5268670 (S.D. Cal. Oct. 17, 2019) and *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No. 15-8629-FMO, 2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).

SUMMARY OF SIGNIFICANT SETTLEMENTS

Since its founding, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531(2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*. Mr. Wu recently achieved an important consumer victory in *Nguyen v. Nissan N.A.*, 932 F.3d 811 (9th Cir. 2019), which clarified the use of "benefit of the bargain" damages models in consumer class actions.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

Robert Drexler. Robert Drexler is a partner with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims

such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2020.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal.

Jamie Greene is a partner with Capstone Law, where she leads the firm's business development and case generation team. Ms. Greene is responsible for evaluating all potential new cases and referrals, developing new claims, and managing the firm's client and cocounseling relationships. She also supervises the pre-litigation phase for all cases, including investigation, analysis, and client consultation.

Before joining Capstone, Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. Ms. Greene is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California.

Senior Counsel

Theresa Carroll Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Ms. Carroll was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Ms. Carroll received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter Liana Carter is a senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Anthony Castillo. Anthony Castillo is a senior counsel with Capstone Law. His practice focuses on analyzing and developing pre-litigation wage-and-hour and consumer claims, including PAGA representative actions and class actions for failure to pay overtime and minimum wages, meal and rest period violations, and claims under the Fair Labor Standards Act and the Investigative Consumer Reporting Agency Act. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues.

Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Molly DeSario. Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Ms. DeSario's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. She has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Ms. DeSario began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, she has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated summa cum laude.

Robert Friedl. Robert Friedl is a senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Daniel Jonathan. Daniel Jonathan is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Mr. Jonathan began his career as an associate at Kirkland & Ellis representing Fortune 500 clients in high-stakes litigation in various matters, including class action defense and plaintiff's actions for accounting fraud. Following that, he was a senior counsel at a boutique litigation firm where he successfully first-chaired several trials. Mr. Jonathan graduated from the Northwestern University School of Law. He received his undergraduate degree in Accounting from the University of Southern California, where he graduated cum laude. He has passed the CPA examination and worked as an auditor at Deloitte before attending law school.

Jonathan Lee. A senior counsel with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California.

Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Mark A. Ozzello. Mark A. Ozzello is a senior counsel with Capstone Law, where he leads the firm's consumer team. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. He has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mr. Ozzello is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mr. Ozzello attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mr. Ozzello has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, and concentrates his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement.

Mao Shiokura. Mao Shiokura is a senior counsel with Capstone. Her practice focuses on identifying, evaluating, and developing new claims, including PAGA representative actions and class actions for wage-and-hour violations and consumer actions under the Consumers Legal Remedies Act, False Advertising Law, Unfair Competition Law, and other consumer protection statutes. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships.

Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. Mr. Stobart has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, Mr. Stobart was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Mr. Villalba began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Mr. Villalba graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

Steven Weinmann. Steven Weinmann is a senior counsel with Capstone Law and leads the consumer rights team. His practice encompasses complex and class action litigation, including consumer product and services cases under California's Unfair Competition Law (UCL), data privacy breach cases, and a special emphasis on vehicle defect litigation. He has a background in securities litigation, antitrust, environmental law, and consumer class action cases.

Prior to joining Capstone, Steven's experience included litigating class actions on behalf of employees and consumers, in addition to representing individuals and small and large companies in various types of litigation, from business disputes to personal injury, financial fraud, construction defects, and products liability. Steven has been instrumental in achieving favorable results for numerous certified classes, including cases against Home Depot USA (for wage and hour and UCL claims); LegalZoom.com, Inc. (claims involving illegal practice of law); Wells Fargo Bank, N.A. (UCL, CLRA, federal Truth in Lending Act [TILA] claims). Steven briefed and help bring about numerous reported decisions including *Fraleigh v. Facebook*, 830 F.Supp.2d 785 (N.D. Cal. 2011) (defeating a motion to dismiss on claims involving the right to publicity); *Ceja v. Rudolph & Sletten*, 194 Cal.App.4th 584 (Sixth Appellate Div. 2011), affirmed, California Supreme Court, 56 Cal. 4th 1113 (2013) (confirming the test for determining putative spouse status is a subjective one). He also helped brief and obtained a decision favorable to plaintiffs in a seminal case under California's UCL, *McAdams v. Monier, Inc.*, 182 Cal.App.4th 174 (2010) (deciding only the named class representative needed to satisfy Proposition 64 standing requirements). He received his J.D. with distinction from the Hofstra University School of Law, where he was an associate editor on the Hofstra Law Review, and earned his undergraduate degree in English Literature and Political Science from Rutgers University.

Tarek Zohdy. A senior counsel with Capstone Law, Tarek Zohdy develops, investigates and litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class actions from investigation through settlements that have provided significant relief to millions of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

Associates

Brandon Brouillette. Brandon Brouillette is an associate with Capstone Law, where his practice focuses on representing employees and consumers in complex litigation, primarily wage-and-hour class actions and PAGA representative actions. Mr. Brouillette's entire legal career has been devoted to representing individual and class representative plaintiffs against large corporate entities. Prior to joining Capstone, he served as an associate at Boucher LLP where he managed the firm's wage-and-hour class actions. He earned his Juris Doctor from Loyola Law School, Los Angeles, where he spent a summer interning for the legal clearance and corporate legal departments at Warner Bros. He received his undergraduate degree from the University of Southern California, where he majored in Business Administration and spent a semester abroad in Budapest, Hungary. In 2016, Brandon was selected as one of Super Lawyers' "Rising Stars" in Southern California.

Joseph Hakakian. Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Mr. Hakakian served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. He graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Mr. Hakakian received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Michelle Kennedy. Michelle Kennedy is an associate with Capstone Law. Her practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. She began her career as a contract attorney in the Utah Attorney General's Civil Litigation Division handling torts, civil rights, and employment law matters. She later founded her own firm handling business and intellectual property matters, where she settled a copyright infringement suit. Prior to moving to Southern California, Ms. Kennedy was recognized by Super Lawyers as a Mountain States Rising Star in 2017 and 2018. She also served as President of the Utah Minority Bar Association and as an Ex-Officio Member of the Utah State Bar Commission. Michelle graduated from the University of Utah S.J. Quinney College of Law in 2013, where she served as President of the Art Law Alliance and Vice President of the Minority Law Caucus. She earned her undergraduate degree from Brigham Young University in 2010, where she majored in Philosophy. Ms. Kennedy is an active member of the Consumer Attorneys Association of Los Angeles (CAALA) and the Los Angeles County Bar Association. Michelle is admitted to practice law in Utah and California.

Alexander Lima. Alexander Lima is an associate with Capstone Law. His practice focuses on evaluating pre-litigation wage-and-hour claims, including potential violations of overtime and minimum wage law, meal and rest period requirements, and off-the-clock work issues, as well as consumer protection claims. Previously, Mr. Lima was an associate at a California civil litigation practice representing individuals and entities in real estate disputes. He graduated from Santa Clara University, School of Law in 2018, where he served as an Executive Board Member of the Honors Moot Court and was selected as a regional finalist for the American

Bar Association Negotiation Competition. He received his undergraduate degree from the University of California, Riverside in 2014.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Ms. Monesi graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Julian Quattlebaum. Julian Quattlebaum is an associate with Capstone. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. He began his career at an entertainment law firm, handling intellectual property matters, copyright infringement disputes, and contract litigation. During his time at the firm, he authored an amicus brief that was quoted in oral argument before the Ninth Circuit Court of Appeals during en banc review. Later, he helped author an appellate brief regarding the rights to the storyline of a successful Disney film franchise. Mr. Quattlebaum graduated from Emory University School of Law in 2019. While there, he was a member of the Moot Court Society, representing the school at the NYU Immigration Law competition in his second year, and the National Competition in his third year. He was given the Society's Award for Excellence in Oral Advocacy and was inducted into the Order of Emory Advocates. He earned his undergraduate degree from the University of Colorado Boulder in 2015, where he majored in Evolutionary Biology.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**DECLARATION OF BASSIL A. HAMIDEH
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

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19 Class Counsel

1 I, Bassil A. Hamideh, declare as follows:

2 1. I am an attorney admitted and licensed to practice in the state of California and before
3 all United States District Courts in California, the Ninth Circuit Court of Appeals, and Supreme
4 Court of the United States. The matters stated herein are known to me based upon my own personal
5 knowledge, except as otherwise stated. I am a member of the law firm The Hamideh Firm, P.C.,
6 counsel for Plaintiffs Thomas Lewis and Aurelio Sanchez, and Co-Class Counsel for the certified
7 Class.

8 2. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary
9 Approval of Class Action Settlement.

10 3. I received my *Bachelor of Science* from the University of Southern California,
11 Marshall School of Business in 2004. I went on to attend and receive my law degree from the
12 George Washington University Law School. In law school I received the American Jurisprudence
13 Award in Professional Responsibility receiving the only A+ in my class. I also won numerous mock
14 trial competitions during law school. I was admitted to the California Bar in December 2008. I have
15 been practicing law for approximately 13 years and have focused primarily on wage and hour class
16 actions for the past 10 years. I was recognized as a *Super Lawyers "Rising Star"* in the areas of
17 labor and employment litigation and class actions for 6 consecutive years, every year from 2013-
18 2018 and selected to the *Super Lawyers* list for the past two years 2020 and 2021. In February 2021,
19 I was recognized by the Daily Journal for my role as co-lead litigation and trial counsel in a case
20 resulting in one of the top verdicts in California for 2020.

21 4. Since 2008, I have practiced continuously as a litigator and trial attorney in individual
22 and complex class and Private Attorney General Act ("PAGA") cases. I started my practice in 2008
23 at the law firm of Munger Tolles & Olson, but soon thereafter opened my own firm. I have focused
24 my practice on wage and hour (individual, class action, and PAGA), employment discrimination
25 and retaliation, right of publicity, patent, copyright, and trademark cases.

26 5. I am involved in every detail of all my cases from inception until conclusion,
27 including client intake, investigation, research, drafting and filing Complaints, propounding and
28 responding to discovery, witness interviews, depositions, motion practice, settlement, trial, and

1 appeal.

2 6. The same is true of the instant case which is the first filed of the many other cases
3 subsequently stayed by the Court. This case was zealously litigated by both sides. I have, personally,
4 spent more than 2,000 hours of attorney time on this case for more than 8 years, starting with the
5 first client interview to the present. I interviewed the prospective Plaintiffs, performed substantial
6 pre-filing research, collaborated with co-counsel, prepared the first filed Complaint, drafted
7 and responded to discovery, reviewed thousands of pages of documents from both Defendants
8 and Plaintiffs, interviewed putative class members, identified and interviewed Plaintiffs'
9 expert, appeared at all court hearings, drafted motions, oppositions, and replies, participated
10 in the preparation of, taking, and defending almost all depositions. I also worked closely with co-
11 counsel and clients to investigate and further the litigation through prevailing on class certification,
12 attending numerous in-person and telephonic formal and informal settlement meetings, all of which
13 ultimately led to this settlement. I also have been closely involved in analyzing the defendant's
14 ability to fund a settlement in this matter. I have appeared and argued before every one of the many
15 judicial officers managing this case from 2013 to present.

16 7. I have had the privilege of working closely with the other Class Counsel in this case,
17 Capstone Law APC and Marlin & Saltzman LLP, on numerous other Class and PAGA actions over
18 the past 10 years, resulting in cases being certified, our firms appointed lead counsel, and ultimately
19 settlement of those cases, which have resulted in payments to thousands of class members.

20 8. Based on the foregoing, I submit that The Hamideh Firm, P.C. is amply qualified to
21 continue to serve as class counsel for this matter, as the Court, in fact, has already found, and
22 previously has appointed The Hamideh Firm, P.C. as co-class counsel in this matter.

23 9. In the below detailed listing, which is by no means a full list of all my cases, I served
24 as lead and/or class counsel throughout California.

- 25 a. *Moradian v. Rideshare Port Management, LLC et al.*, LASC Case No. BC496400
26 before Honorable Kenneth R. Freeman; PAGA case seeking damages and penalties
27 for misclassification of employee drivers as independent contractors, failure to
28 reimburse necessary business expenses, failure to pay all overtime and minimum

wages, failure to provide itemized wage statements, failure to pay all wages upon termination, failure to provide rest breaks and meals breaks, among other causes of action. Arbitrator awarded \$1,300,000 in damages, penalties, and attorneys' fees.

b. *Hubert Hansen Intellectual Property Trust v. Coca Cola Company/Monster Beverage Company et al*, San Diego Superior Court, Case No. 37-2016-00021046-CU-MC-CTL before Honorable Timothy B. Taylor: Co-lead litigation and trial counsel representing Plaintiff Trust of 3 trustees and 52 beneficiaries in right of publicity action against above-mentioned Defendants resulting in largest standing right of publicity verdict in U.S. history in the amount of \$9.6 million and additional attorneys' fees awarded in the amount of \$7.3 million, for a judgment of approximately \$17 million. Case filed in June 2016 and jury verdict delivered February 2020. Case fully briefed and awaiting oral argument, case appealed, fully briefed, and awaiting oral argument.

c. *Valdovinos et al, v. American Logistics Company, et al.*, Orange County Superior Court Case No. 30-2011-00470090-CU-OE-CXC before Honorable Kim G. Dunning; Co-lead counsel in Class and PAGA action seeking damages and penalties for misclassification of (approximately 700) employee drivers as independent contractors, failure to reimburse necessary business expenses, failure to pay all overtime and minimum wages, failure to provide itemized wage statements, failure to pay all wages upon termination, failure to provide rest breaks and meals breaks, among other causes of action. Case settled after 7 years of litigation.

d. *Valladares v. Insomniac et al.*, San Bernardino Superior Court, Case No. CIVDS1402710 before Honorable John M. Pacheco, Dept. S3: Co-lead counsel in class action for damages and penalties for failure to pay minimum wage, overtime, provide meal and rest breaks, provide complaint and itemized wage statements, and failure to pay all wages upon termination. Case settled after 3 years of litigation.

e. *Levy v. Keolis Transit America, Inc. et al.*, LASC Case No. BC535715 before Honorable William F. Highberger: Appointed lead Plaintiffs' counsel in class action

1 resulting in settlement for damages and penalties for 312 transit drivers for failure to
2 pay all overtime and minimum wages, failure to provide itemized wage statements,
3 failure to pay all wages upon termination, and failure to provide rest breaks and meals
4 breaks.

5 f. *Hernandez et al v. Restoration Hardware et al.*, San Bernardino Superior Court, Case
6 Number CIVDS172332 before Honorable David S. Cohn: Class and PAGA action
7 seeking damages and penalties for misclassification of employee delivery workers
8 as independent contractors, failure to reimburse necessary business expenses, failure
9 to pay all overtime and minimum wages, failure to provide itemized wage statements,
10 failure to pay all wages upon termination, failure to provide rest breaks and meals
11 breaks, among other causes of action. Case filed in November 2017, class
12 certification motion filed, and is ongoing.

13 g. *Olive v. General Nutrition Centers, Inc.* LASC Case No. 482686; Co-lead counsel in
14 action for unlawful use of Plaintiff's likeness in violation of Cal. Civ. Code Section
15 3344 for defendant's unauthorized use of client's likeness in 8,200 stores across the
16 world, buildings, bus-stops, billboards, franchise materials, etc., common law
17 misappropriation of likeness, and unjust enrichment. Jury returned a verdict in
18 plaintiff's favor. Final judgment approximately \$1,700,000.

19 h. *Kolb v. Bellagio LLC and MGM Resorts International*; CDCA Case No. 2:15-cv-
20 08512-SVW-JPR; 6 plaintiff multi-district action in California and Nevada against
21 Defendants for misappropriation of likeness, violation of Civil Code 3344, and unjust
22 enrichment.

23 i. *Eykel v. Beach Body LLC, et al* LASC Case No. BC655675, Honorable John P.
24 Doyle; Action on behalf of plaintiff for violation of likeness in violation of California
25 Civil Code Section 3344, common law misappropriation of likeness, and unjust
26 enrichment.

27 j. *Jillella v. International Solutions Group, Inc. et al*, United States District Court for
28 the Central District of California before Honorable Manuel L. Real. Action for failure

1 to pay minimum wage, overtime, fraud, failure to provide itemized wage statements,
2 failure to pay all wages upon termination, breach of contract, among other causes of
3 action. Obtained unanimous reversal at Ninth Circuit Court of Appeals for dismissal
4 due to lack of personal jurisdiction.

5 k. *Richmond v. Skechers USA, Inc. et al*, LASC before Honorable Yvette Palazuelos;
6 Action for damages and injunctive relief for violation of likeness in violation of Cal.
7 Civ. Code Section 3344, common law misappropriation of likeness, unjust
8 enrichment, and fraud.

9 l. *Monzon v. Dolce Gabbana S.r.L et al*, United States District Court for the Central
10 District of California before Honorable Margaret Morrow; Action for damages and
11 injunctive relief for violation of likeness in violation of California Civil Code Section
12 3344, common law misappropriation of likeness, and unjust enrichment.

13 m. *Zamora v. Imation Corp. et al*, LASC; Action for damages and injunctive relief for
14 violation of California Civil Code Section 3344, common law misappropriation of
15 likeness, and unjust enrichment.

16 n. *De La Cruz v. Hireko Trading Company, Inc.*, LASC Case No. BC500211. Action
17 for damages and injunctive relief for violation of California Civil Code Section 3344,
18 common law misappropriation of likeness, and restitution for unjust enrichment.

19 o. *Goodness Films, LLC et al v. TV One, LLC et al*, United States District Court for the
20 Central District of California before Honorable George Wu. Multiple plaintiffs vs.
21 multiple defendants for copyright infringement, breach of implied contract, and
22 conversion. Defense verdict in favor of my client after 5-day jury trial.

23 p. *Rasheed et al v. Time Warner Cable, LLC et al*, Los Angeles Superior Court. Multi-
24 plaintiff action seeking damages for negligence and negligent infliction of emotional
25 distress.

26 q. *Universal City Studios Productions LLLP, News Corp., et al v. Harbor Fitness, LLC*
27 *et al*, United States District Court for the Central District of Utah. Action on behalf
28 of multiple plaintiffs for trademark infringement, false designation of origin, passing

- 1 off, false advertising, dilution, counterfeiting, alter ego liability, and civil conspiracy.
- 2 r. *Charles v. Nordstrom, Inc.*; Action on behalf of plaintiff for violation of likeness in
- 3 violation of California Civil Code Section 3344, common law misappropriation of
- 4 likeness, and unjust enrichment.
- 5 s. *Carhill et al v. Skechers USA, Inc. et al*; Action on behalf of plaintiff for violation of
- 6 likeness in violation of California Civil Code Section 3344, common law
- 7 misappropriation of likeness, and unjust enrichment.
- 8 t. *Saizarbitoria v. Philips Healthcare, Inc.*; Action for violation of California Civil
- 9 Code Section 3344, common law misappropriation of likeness, and unjust
- 10 enrichment.
- 11 u. *Lyons, et al v. Casino Royale*; Action on behalf of plaintiffs for damages and
- 12 injunctive relief for violation of California Civil Code Section 3344, common law
- 13 misappropriation of likeness, and restitution for unjust enrichment.
- 14 v. *Fritz, Alexandre et al v. Barefoot Dreams, Inc.*; Action on behalf of plaintiffs for
- 15 damages and injunctive relief for violation of California Civil Code Section 3344,
- 16 common law misappropriation of likeness, and restitution for unjust enrichment.
- 17 w. *Curry v. Crystal Cruises et al LASC Case No. 635769*, Honorable Richard E. Rico;
- 18 Action on behalf of plaintiff for violation of likeness in violation of California Civil
- 19 Code Section 3344, common law misappropriation of likeness, and unjust
- 20 enrichment.

21 I declare under penalty of perjury, under the laws of the State of California, that the foregoing

22 is true and correct to the best of my personal knowledge and that I would and could competently

23 testify thereto, if called upon and sworn.

24 Executed this 21st day of February 2021, at Los Angeles, California.

25

26

27 Bassil Hamideh

28 Bassil A. Hamideh, Declarant

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Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**DECLARATION OF STEPHEN P. O'DELL
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

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19 Class Counsel

1 I, Stephen P. O'Dell, declare as follows:

2 1. I am an attorney admitted and licensed to practice in the state of California and before
3 all of the United States District Courts in the State of California as well as the Ninth Circuit Court
4 of Appeals. The matters stated herein are known to me based upon my own personal knowledge,
5 except as otherwise stated. I am an attorney with Marlin & Saltzman, LLP, counsel for Plaintiff,
6 Eliseo Leal, and Co-Class Counsel for the certified Class in this matter.

7 2. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary
8 Approval of Class Action Settlement.

9 3. I attended undergraduate university in Albuquerque, New Mexico, where I obtained
10 my Bachelor of Arts degree, in 1984. I was then admitted to Pepperdine University School of Law,
11 in Malibu, CA, where I competed in trial competitions and moot court, among other activities, before
12 graduating with a Juris Doctor, in 1987. I took and passed the summer bar examination, and was
13 then admitted to practice law in December of 1987.

14 4. Since 1987, I have been practicing continuously as a litigator in routine and complex
15 cases (including construction defect litigation, bad-faith insurance litigations, and multi-victim and
16 multi-jurisdiction cases), beginning mostly (but not exclusively) on the defense side and then
17 transitioning, after about 18 years, to full-time practice on the plaintiffs' side.

18 5. Prior to joining Marlin & Saltzman, I worked at a primarily defense-side firm in
19 Orange County, for about eight years. By 1992, I was trying cases by myself, as well as serving as
20 lead or liaison counsel on complex, construction defect cases. Thereafter, I spent a couple of years
21 in solo practice, continuing mostly with construction defect defense, but also handling a few
22 plaintiff-side cases, as well as several solo trials in bad-faith litigation defense cases.

23 6. I joined Marlin & Saltzman in 1997.

24 7. For many years, the Marlin & Saltzman firm, has been responsible for all facets of
25 class action litigation, PAGA cases, and other complex litigation, from pre-filing investigation
26 through trial and appeal. Our firm has successfully litigated cases involving numerous alleged
27 violations of various employment laws and practices, including the type of misclassification
28 violations presented herein. Prior to transitioning to plaintiffs' side representation, the firm was

1 previously heavily involved in the defense of class and complex litigation, and numerous exemplar
2 defendant side cases are also included in the listing of exemplar cases below. The plaintiff-side
3 employment cases, and other plaintiff side class action cases, have resulted in the payment of
4 hundreds of millions of dollars in settlements. Specifically, our firm has been responsible for the
5 resolution of claims in these fields totaling in excess of \$950 million paid out in settlements or
6 judgments. Examples of some of the many cases we have handled, and are handling, are set forth
7 hereafter.

8 8. Marlin & Saltzman has had an interesting firm history since commencing operations
9 in 1985. Prior to transitioning to plaintiffs' side representation (mostly in class actions)
10 approximately 20 years ago, the firm had previously focused almost entirely on the defense of class
11 and complex litigation, such that numerous exemplar defendant side cases are also included in the
12 listing of exemplar cases set forth below. The transition to the plaintiff's side began about 20 years
13 ago, and took about five years to complete. Since the transition was completed about 20 years ago,
14 the firm has focused on both consumer and employment class action cases and representative
15 actions.

16 9. Over the course of this entire 20-year plaintiffs-side class action history, and even
17 prior thereto, I, who am the senior counsel in our firm handling this case, have been involved in
18 many dozens of such class actions, in one way or another.

19 10. Over the 20 years devoted to handling plaintiff-side class actions, the firm has also
20 engaged in five class action trials, including jury trials, court trials, or binding arbitrations. I daresay
21 there are very few firms, of our size (usually about ten lawyers) or any size, which can attest to that.
22 I have been one of the trial counsel in some of these trials, which normally have involved either a
23 trial team within our firm, or a team including co-counsel. The firm has also answered ready for and
24 begun jury selection in at least two other class actions, which then settled very favorably during jury
25 selection.

26 11. In addition, the firm's Senior Partner, Stanley D. Saltzman, was privileged to be able
27 to argue, successfully, the matter of *Troester v. Starbucks* to the California Supreme Court. The
28 resulting decision has largely eliminated the federally recognized "*de minimis*" defense from our

1 state-court actions, a critical victory for the workers in this state.

2 12. In addition to the *Troester* matter noted above, our firm also has had extensive
3 experience in both the California Courts of Appeals and in the Ninth Circuit. I, personally, have
4 often been involved in appellate presentations in both California and federal courts, have personally
5 argued some of those matters, and, further, estimate that our firm has presented and argued more
6 than twenty (20) matters in the appellate courts, which have resulted in several major victories for
7 plaintiffs in the class action arena.

8 13. A list of exemplar class actions which have resulted in settlements and/or judgments,
9 including some of the largest results achieved by the firm, is set forth hereafter. Additionally, the
10 firm (and the undersigned directly) has taken many of its cases to contested certification
11 proceedings, such as in this case, and that is often noted in the listing of exemplar cases below.

12 14. Based on the foregoing, I submit that Marlin & Saltzman is more than qualified to
13 continue to serve as class counsel for this matter, as the Court, in fact, has already found, and
14 previously has appointed Marlin & Saltzman as co-class counsel in this matter.

15 15. In the below detailed listing, I, personally, assisted in litigating many of the cases
16 listed and was appointed as class counsel or was specified as among those appointed as class
17 counsel, in the following cases: **Van Heyn vs. WMC Mortgage Corp.**, Los Angeles Superior
18 Court; **Miller v. Ikea**, Orange County Superior Court; and, **Maire v. Country Villa Service**
19 **Corporation**, Los Angeles Superior Court.

20 16. In addition to the exemplar cases listed below, I was also appointed as class counsel
21 or among those appointed as class counsel in the cases of: **Hernandez v. Wall Design, Inc.**, Orange
22 County Superior Court; **Edmiston v. Loma Linda University Medical Center-Murrieta**,
23 Riverside Superior Court; **Torres v. United Staffing Associates, LLC**, Ventura Superior Court;
24 **Jacobo v. PWP Industries, Inc.**, Los Angeles Superior Court; **Segura v. National Construction**
25 **Rentals, Inc.**, Los Angeles Superior Court; and, **Nahed v. Roadrunner Management Services,**
26 **Inc.**, Ventura Superior Court.

27 17. The following exemplar listing of class action cases is by no means the totality of the
28 cases handled by the firm:

- 1 a. **Ridgeway v. Wal-Mart**, Northern District of California. For the entire month of
2 November, 2016, this certified class action was tried before the Honorable Susan
3 Illston, against Defendant Walmart Stores, Inc., on behalf of Walmart's employee
4 truck drivers. The trial resulted in a plaintiffs' verdict for \$60,800,000.00 in unpaid
5 wages. Following the recent affirmation of the verdict by the Ninth Circuit, and the
6 further denial of *en banc* review, the verdict is now final and has been paid in full.
- 7 b. **Gutierrez vs. State Farm**, Los Angeles Superior Court. Class action seeking
8 overtime compensation for insurance claims adjusters employed by defendant in the
9 State of California. Plaintiffs' counsel. Certification granted, and then summary
10 adjudication as to liability granted in favor of the class. The case involved multiple
11 appellate proceedings. The case then settled only months prior to trial, following all
12 pre-trial preparation and expert depositions, for the amount of \$135 million, with
13 Final Approval granted and no objections filed.
- 14 c. **Bednar vs. Allstate Insurance Company**, Los Angeles Superior Court. Class
15 action seeking overtime compensation for insurance claims adjusters employed by
16 defendant in the State of California. Plaintiffs' counsel. Certification granted, and
17 then summary adjudication as to liability also granted in favor of the class. This
18 case also involved multiple appellate proceedings. Case settled during jury selection
19 proceedings, in the amount of \$120 million. Final Approval granted with one
20 objection filed, and then withdrawn.
- 21 d. **In re: Wal-Mart Wage and Hour Litigation**, United States District Court for the
22 Northern District of California. Class action seeking unpaid vacation pay and
23 penalties. This case settled following argument in the Ninth Circuit on certification
24 issues, on which the Class had prevailed in the district court, but before a ruling by
25 the Ninth Circuit was issued. The case settled for a maximum payment of \$86
26 million. Final approval granted.
- 27 e. **Schenck v. Jenny Craig, Inc.**, Orange County Superior Court. Class action under
28 the Consumer Legal Remedies Act, certified as a liability class and settled as a

1 mandatory settlement class for in excess of \$40 million in cash and benefits. Marlin
2 & Saltzman served as lead Counsel for the plaintiffs.

3 f. **H & R Block Litigation**, United States District Court for the Northern District of
4 California. Class certified before the Honorable Susan Illston, and settlement
5 reached prior to trial. Total settlement was \$35 million.

6 g. **In re. Bank of America Nationwide Employment Litigation**, United States
7 District Court for the District of Kansas. MDL of over twenty actions filed across
8 the country, where our firm was appointed as co-lead nationwide counsel, by the
9 District Court in Kansas. After four years of intense litigation, the case settled for
10 \$73 million dollars, and final approval was granted.

11 h. **Harris vs. Vector Marketing Corp.**, United States District Court, Northern District
12 of California. Class Counsel on a case involving a claim for unpaid training time,
13 which received both state law and FLSA certification, before settling only months
14 prior to trial. Final approval of \$13 million settlement granted.

15 i. **Hopkins v. Stryker Sales Corp.**, United States District Court, Northern District of
16 California. Class Counsel. Case settled in 2013 for \$4.5 million dollars.

17 j. **Miller v. Ikea**, Orange County Superior Court. Class action seeking unpaid wages
18 for class of retail store employees. The case was settled after extensive litigation,
19 for a total of \$6.5 million dollars.

20 k. **Maire v. Country Villa Service Corporation**, Los Angeles Superior Court. This
21 complex class action case involved over 50 related defendant partnerships and
22 sought unpaid wages for employees of numerous assisted living facilities, resulting
23 in a total settlement of \$7.5 million dollars.

24 l. **In Re Computer Monitor Class Action**, San Francisco Superior County Superior
25 Court. Nationwide class action, including claims under the Consumer Legal
26 Remedies Act, pertaining to false advertising of computer monitors. Our firm was
27 appointed as a member of the plaintiffs' executive committee.

28 m. **Bickley v. Schneider Transportation Carrier, Inc.**, United States District Court,

1 Northern District of California. Class Counsel. Case settled in 2016 – after eight
2 years of litigation on behalf of a class of employee truck drivers claiming unpaid
3 hours worked, after certification and pending trial and cross motions for summary
4 judgment – for \$28 million dollars. Settlement approval granted, but individual
5 objector appealed to the Ninth Circuit, where the appeal was eventually dismissed
6 and the full settlement was paid.

7 **n. Woods, et. al. vs. Vector Marketing Corp.**, United States District Court, Northern
8 District of California. Class Counsel. Follow on case to the original Harris case
9 listed above, filed due to Defendant not altering all of the allegedly improper conduct
10 after the first settlement. Class again certified, this time under the laws of six
11 different states and the FLSA, and a second settlement for \$6.75 million dollars was
12 approved.

13 **o. Quezada v. Con-Way Trucking Inc.**, United States District Court, Northern
14 District of California. Co-class counsel. Case settled in 2014 after six years of
15 litigation, after certification and pending trial and cross motions for summary
16 judgment, for \$2 million dollars.

17 **p. Ko and Chen v. Chinese Yellow Pages**, Los Angeles Superior Court. Consumer
18 action involving failure to reimburse per contract for limited production of yellow
19 pages. Lead Plaintiffs' Counsel. Class Certified and then settled prior to trial for
20 several million dollars. Most interesting case in that it involved an early challenge
21 to an attempt by the Defendant to effect individual settlements with the putative
22 class.

23 **q. Roberts vs. Coast National Insurance**, Orange County Superior Court. Class
24 action seeking overtime compensation for insurance claims adjusters employed by
25 defendant in the State of California. Plaintiffs' counsel. Certification granted, and
26 then the matter was tried to binding arbitration. Case settled for in excess of \$20
27 million during the arbitration, after the highest pre-trial offer from the Defendant
28 had been for \$1 million.

- 1 r. **CNA Class Action Litigation**, Los Angeles Superior Court Class. Class action
2 seeking overtime compensation for insurance claims adjusters employed by
3 defendant in the State of California. Plaintiffs' counsel. Case settled in 2005 for \$33
4 million.
- 5 s. **Hoyng v. AON**, Los Angeles County Superior Court. Class action seeking overtime
6 compensation for certain employees employed by defendant third party
7 administrator in the State of California. Plaintiffs' counsel. Certification granted.
8 Case settled for \$10.5 million.
- 9 t. **Parris vs. Lowe's Home Improvement**, Los Angeles Superior Court. Class action
10 seeking payment of "off the clock" hours worked by all hourly employees of Lowe's
11 in the State of California. Plaintiffs' counsel. Case ordered certified by the Court of
12 Appeals, Second Appellate District, California, on reversal of trial court order
13 denying certification. Appellate argument handled by our firm. Case then settled for
14 \$29.5 million.
- 15 u. **Pardo, et al. vs. Toyota Motor Sales, U.S.A., et.al.**, Los Angeles Superior Court.
16 Plaintiffs' class counsel. Wage and hour class action settled for \$7.75 million.
- 17 v. **Fulton vs. Cisco Systems, Inc.**, Orange County Superior Court. Wage and hour
18 litigation seeking overtime and related compensation. Plaintiffs' class counsel.
19 Settled for \$6.7 million.
- 20 w. **Van Heyn vs. WMC Mortgage Corp.**, Los Angeles Superior Court. Action for
21 violation of Labor Code §§ 2802 and 2804, etc., for failure to reimburse employees
22 for business expenses. Case settled for \$3 million.
- 23 x. **In re: JB Hunt Transport Class Action**, United States District Court for the
24 Central District of California. Class counsel for certified class. Action sought
25 unpaid regular and overtime compensation for truck drivers.
- 26 y. **Pasquale vs. Kaiser Foundation Hospitals**, United States District Court for the
27 Southern District of California. Class counsel. Action sought overtime and related
28 compensation for misclassified employees. Case settled for \$3.7 million.

- 1 z. **Poston vs. Marcus & Millichap Real Estate Investment**, Los Angeles Superior
2 Court. Action for violation of Labor Code §§2802 and 2804, etc. for failure to
3 reimburse employees for business expenses. Class counsel. Case settled for
4 \$1,340,000.
- 5 aa. **Trejo vs. Oakley, Inc.**, Orange County Superior Court. Action for violation of
6 several provisions of the Labor Code. Class counsel. Settlement for \$3.75 million
7 was preliminarily approved pending final approval.
- 8 bb. **Dotson vs. Royal SunAlliance**, Orange County Superior Court. Class action
9 seeking overtime compensation for insurance claims adjusters employed by
10 defendant in the State of California. Plaintiffs' counsel. Case settled in 2005 for
11 \$12.3 million.
- 12 cc. **Rounsavall vs. Countrywide Home Loans, Inc.**, Los Angeles Superior Court.
13 Lead counsel in class action claiming misclassification of computer driven
14 underwriting positions. Case settled for \$15 million and all settlement funds have
15 been distributed.
- 16 dd. **Ortmann vs. New York Life Insurance**, USDC, Central District. Class action
17 involving alleged failure to pay minimum wages to employed insurance agents,
18 failure to reimburse, etc. Matter settled for \$10 million.
- 19 ee. **Barber vs. Buy.Com**, Orange County Superior Court. Certified class action
20 claiming negligent misrepresentation. Plaintiff class counsel. Class certified and
21 settled in 2000.
- 22 ff. **In re: America Online Litigation**, Los Angeles Superior Court. Consumer action
23 involving coordinated California class actions. Lead Plaintiffs' Counsel. Our firm
24 also appeared in the class action venued in Chicago as counsel for the California
25 objectors to the Illinois settlement of that matter.
- 26 gg. **Ortega vs. AIG**, USDC, Central District. Co-lead Counsel for Plaintiffs in overtime
27 misclassification case. Case settled and all settlement funds distributed.
- 28 hh. **Cohen, et. al. vs. The Regents of the University of California**, Los Angeles

1 Superior Court. Counsel for the Regents (Defendant) in numerous complex
2 consolidated actions involving the claims of over 350 plaintiffs. Case resolved
3 favorably for the Regents following ground-breaking appellate ruling on behalf of
4 the Defendant.

5 ii. **Berner vs. Kraft Foods, Inc.**, USDC, Central District. Counsel for Plaintiffs in
6 “off the clock” action, plus meal and break time. Case settled.

7 jj. **In Re. ABS Plastics Litigation**, Alameda Superior Court. Lead counsel for one of
8 the two target defendants in Western Region (eleven states) product liability class
9 action. Case settled prior to certification, after extensive discovery and
10 investigation.

11 kk. **Higby vs. Fernwood Cemetery, et al.**, San Francisco Superior Court. Lead defense
12 counsel for primary defendant in alleged cemetery/crematory violations action.
13 Class stipulated to by prior personal counsel, and then action defended at a one
14 month trial by “binding arbitration” before JAMS, San Francisco.

15 ll. **Bennett v. Regents of the University of California**, Los Angeles County Superior
16 Court. Mass tort litigation. Defense counsel for the Regents of the University of
17 California (UCLA). Certified as a class for injunctive relief only. Defeated
18 certification of liability class. Summary judgment granted to defendant in
19 connection with all liability claims.

20 mm. **Simpson (Coghill) vs. Regents of the University of California**, Orange County
21 Superior Court. Mass tort litigation. Defense counsel for the Regents of the
22 University of California (UCI). Certification motion defeated on behalf of our client.

23 nn. **Sconce/Lamb Cremation Cases**, Los Angeles County Superior Court. Mass
24 tort/wrongful cremation litigation. Served as lead defense counsel. Settlement class
25 certified, again after ground-breaking ruling favoring our clients from the California
26 Supreme Court.

27 oo. **In Re Evergreen Class Action**, Riverside County Superior Court. Mass
28 tort/wrongful cremation. Served as lead defense counsel.

1 pp. **In Re Cheesecake Factory Class Action**, Los Angeles County Superior Court.
2 Class action claiming violation of the provisions of the Americans With Disabilities
3 Act. Served as co-lead defense counsel.
4 qq. **In Re Leneda Crematory Class Action**, San Diego County Superior Court. Mass
5 tort/wrongful cremation action. Served as mortuary defendants' lead counsel.
6 rr. **In Re Pomona Cemetery Class Action**, Los Angeles County Superior Court. Mass
7 tort/wrongful cremation. Served as member of defense counsel executive
8 committee.
9 ss. **Brock v. McCormick**, Orange County Superior Court. Mass tort class action
10 litigation. Defendants' lead counsel. Settlement class certified.
11 tt. **In Re Paradise Memorial Park Litigation**, Los Angeles County Superior Court.
12 Mass tort/improper burial practices class action litigation. Defendants' liaison
13 counsel. Settlement class certified.
14 uu. **In Re Lincoln Cemetery Class Action**, Los Angeles County Superior Court. Mass
15 tort/wrongful burial practices class action litigation. Liaison counsel for mortuary
16 defendants. Settlement class certified.
17 vv. **In Re Mini-blinds Class Action**, Alameda County Superior Court. Nationwide
18 class action, including claims under the Consumer Legal Remedies Act, pertaining
19 to lead content of mini-blinds. Member, plaintiffs' executive committee.
20 ww. **Barton vs. UHS of Delaware, Inc.**, Los Angeles Superior Court. Wage and hour
21 class action. Class Counsel. Final settlement approval granted.

22 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
23 is true and correct to the best of my personal knowledge and that I would and could competently
24 testify thereto, if called upon and sworn.

25 Executed this 19th day of February, 2021, at Anaheim Hills, California.

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Stephen P. O'Dell, Declarant

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Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

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19 Class Counsel

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DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am one of the attorneys of record and Class Counsel for Plaintiff Eliseo Leal (“Plaintiffs” or “Class Representatives”) and the certified class. I submit this declaration in support of the motion for preliminary approval (“Motion”) of the Settlement. I am a partner at James Hawkins APLC. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Substantial and detailed information and evidence was obtained by Class Counsel during the course of the litigation. The exchange of discovery ensured that the parties had all information needed to analyze the strengths and weaknesses of the claims, present the motion for class certification, to then determine the monetary exposure of the claims, including relevant class data points, and ultimately agree to the settlement that is now presented to the Court for approval.

3. The documents and data produced in this litigation led to the production of considerable evidence, including the policies and practices directly at issue, as well as those policies and procedures that potentially affected Defendants’ ability to comply with the Labor Code. My team and I analyzed thousands of documents produced by Defendants, including wage records. Based on my review of discovery produced by Defendants, we were able to persuasively pinpoint the problematic policies and procedures that ultimately formed the backbone of the motion for class certification in which the Court granted class certification. These documents also enabled us to determine Defendants’ potential exposure for damages and penalties.

4. I and my team investigated the claims at issue, which included: (1) determining Plaintiffs’ suitability as putative representatives through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiffs’ potential representative claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing wage records; (5) researching settlements in similar cases; (6) evaluating Plaintiffs’ claims and

1 estimating Defendant's liability for purposes of settlement; (7) participating in the mediation
2 and settlement discussions; and participating in the drafting of the settlement agreement and the
3 motion for preliminary approval.

4 5. Plaintiffs and class members were able to share with Plaintiffs' Counsel their
5 intimate understanding of Defendants' policies and practices, and how these policies and
6 practices were instituted on a daily basis. In addition to informing Plaintiffs' Counsel's
7 evaluations of the lawsuit, the information that Plaintiffs and other class members provided also
8 influenced Plaintiffs' Counsel's discovery efforts. With the assistance of both formal and
9 informal exchange of discovery, the Parties were able to resolve this matter successfully after
10 mediation, and numerous subsequent settlement discussions.

11 6. All this was taken into consideration when the parties participated in multiple
12 in-person meetings in an attempt to settle the claims at issue. These settlement efforts were
13 conducted during both formal mediation (mediated by Mark Rudy, Esq.) and face-to-face
14 meetings between counsel outside of mediation. Following years of negotiations, the Parties
15 were finally able to negotiate a complete and fair resolution of all claims at issue, which is set
16 forth in complete and final form in the Settlement Agreement.

17 7. Based on the thorough investigation of the claims and the hotly contested issues
18 litigated over the course of almost 8 years, I believe the settlement terms are fair adequate and
19 reasonable and the Court should grant approval.

20 8. I and my firm have a great deal of experience in wage and hour class action
21 litigation. I have been certified and approved as class counsel in many other wage/hour class
22 actions, and I am currently litigating numerous others before federal and state courts. Although
23 not an all-inclusive list, over the years I have prosecuted the following class action matters as
24 lead and/or co-lead counsel, all of which implicated similar law and facts to those associated
25 with this Action:

- 26 a. ***Carey, et. al. v. Arthur J. Gallagher, et. al.***, USDC, SOUTHERN DISTRICT-
27 Case No.: 09-cv-0168. Wage and Hour Class action seeking past wages of
28 overtime for mis-classification of insurance claims adjusters employed by

Gallagher Bassett, a third party administrator (TPA) in the State of California. Certification granted. Plaintiffs' counsel co-lead counsel. Case settled and final distribution has been completed.

- b. ***Dao v. 3M Company, et al.*** USDC, CENTRAL DISTRICT, Case No. CV-08-04554. Wage and Hour Class Action case seeking past wages for “off the clock”, overtime and meal and rest break violations for production workers in the State of California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- c. ***Ortiz v. Kmart***, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiff's counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- d. ***Morgan v. Aramark Campus, LLC***, USDC, CENTRAL DISTRICT, Case No. SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- e. ***West v Iron Mountain Information Management, Inc, et. al.***; Los Angeles County Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for driver employees in the State of California. Settlement for “binding arbitration.” Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiff's lead trial counsel and class counsel.
- f. ***Gonzalez v. Superior Industries International, Inc., et al.***, Los Angeles County Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for overtime, meal and rest breaks violations for production employees in the State of California. Plaintiff's counsel appointed as lead

counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

g. ***Acosta v. Fleetwood Travel Trailers of California, Inc., et al.***, Riverside County Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production employees in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

h. ***Walker v. Sharkeez, et al.***, Orange County Superior Court, Case No. 05CC00293. Wage and Hour Class Action seeking past wages for unlawful deductions, meal and rest break violations for restaurant employees in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted and funds fully distributed.

i. ***Padron v. Universal Protection Service, et al.***, Orange County Superior Court, Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for security officers in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

j. ***Martinez v. Securitas Security Services USA, et al.***, Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past wages for meal and rest break violations for security officers employed by defendant in the State of California. Plaintiff's counsel and co-counsel. Case settled, Final Approval granted and funds fully distributed.

k. ***Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.***, Riverside Superior Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for housekeepers employed by defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

1. ***Ruiz, et al. v. Unisource Worldwide, Inc., et al.***, USDC, CENTRAL DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and rest period violations for non-exempt employees employed by defendant in the state of California. Case settled. Final Approval granted and funds fully distributed.
- m. ***Herrador v. Culligan International Company, et al.***, USDC, CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field and branch employees of defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- n. ***Defries v. Domain Restaurants, et al.***, Orange County Superior Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- o. ***Denton v. BLB Enterprises, Inc., et al.***, Orange County Superior Court, Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest break violations for security guards employed by defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- p. ***Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.***, Los Angeles Superior Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and rest break violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.
- q. ***McMurray v. Dave and Busters, Inc., et al.***, Orange County Superior Court, Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest break violations for restaurant employees employed by defendant

1 in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case
2 settled, Final Approval granted, no objections and funds fully distributed.

3 r. ***Osuna v. DFG Restaurants, Inc., et al.***, Los Angeles Superior Court, Case No.
4 BC 330145. Wage and Hour Class Action seeking past wages of overtime for
5 mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the
6 State of California. Plaintiff's counsel appointed as co-lead counsel. Case
7 settled, Final Approval granted, no objections and funds fully distributed.

8 s. ***Burns v. Gymboree Operations, Inc., et al.***, San Francisco Superior Court, Case
9 No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal
10 and rest break violations for retail employees employed by defendant in the State
11 of California. Plaintiff's counsel appointed lead counsel. Case settled, Final
12 Approval granted, no objections and funds fully distributed.

13 t. ***Willems v. Diedrich Coffee, Inc., et al.***, Orange County Superior Court, Case
14 No. 07CC00015. Wage and Hour Class Action seeking past wages of overtime
15 for mis-classification of managers employed by Defendant in the State of
16 California. Plaintiff's counsel appointed lead counsel. Case settled, Final
17 Approval granted, no objections and funds fully distributed.

18 u. ***Davila, et al. v. Beckman Coulter, Inc., et al.***, Orange County Superior Court,
19 Case No. 07CC01347. Wage and Hour Class Action seeking past wages for
20 overtime, meal and rest break violations for production workers employed by
21 defendant in the State of California. Plaintiff's counsel appointed lead counsel.
22 Cased settled, Final Approval granted, no objections and funds fully distributed.

23 v. ***Perez v. Naked Juice Company of Glendora, Inc.***, Los Angeles Superior Court,
24 Case No. BC387088. Wage and Hour Class Action seeking past wages for
25 overtime, meal and rest period violations for production employees employed by
26 defendant in the State of California. Plaintiff counsel appointed as lead counsel.
27 Case settled, Final Approval granted, no objections and funds fully distributed.

28 w. ***Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and***

1 **Hour Cases**, Los Angeles Superior Court, Case No. JCCP 4545. Wage and Hour
2 Class Action seeking past wages for overtime, meal and rest period violations for
3 security guards employed by defendant in the State of California. Certification
4 granted. Plaintiff's counsel appointed as co-lead counsel. Writ taken. Court
5 stays action pending Appellate Court ruling. Court of Appeal issues stay. Case
6 settled, Final Approval granted, no objections and funds fully distributed.

7 9. To date, my firm as one of the Class Counsel, on behalf of Plaintiffs and the
8 Settlement Class Members have expended hundreds of hours and thousands in costs litigating
9 this matter. At final approval we will submit our lodestar and costs sheet for review and
10 approval.

11 10. The Class Representative Leal provided extensive supporting documents and
12 has assisted Class Counsel in developing information necessary to litigate and settle this case.
13 Plaintiff Leal also conducted record review and consultation with counsel in preparation for
14 discovery, class certification, preparation for trial and settlement discussions, and to assist in
15 evaluating and proving the claims. The settlement provides for an enhancement to be paid to
16 the Class Representatives subject to Court approval. The purpose is to compensate the Class
17 Representatives an additional enhanced payment, taking into consideration the risks, time,
18 effort and expenses incurred in coming forward to provide invaluable information and
19 negotiate and litigate this matter on behalf of all Settlement Class members who otherwise,
20 would probably not file their own individual claims. Further, the payment to the Class
21 Representatives is very fair and justified as part of the Settlement based on the risks and
22 benefits Plaintiffs have taken and benefits conferred upon the Settlement Class.

23 11. Despite the complexity of the case, Class Counsel along with our co-counsel,
24 through the investment of substantial effort and the resources, been able to secure an
25 outstanding settlement on behalf of the Class Members. Plaintiffs would have continued to
26 face legal and factual obstacles in the litigation and trial which are inherent in managing and
27 marshalling evidence for class action trials and are exponentially multiplied when dealing with
28 such a large number of employees. Plaintiffs were also required to begin to establish a

1 significant amount of witness testimony, pattern and practice evidence, statistical evidence,
2 sampling evidence, expert testimony, and other evidence in order to evaluate and present
3 arguments at trial. The further conduct of this litigation will likely span several additional
4 years and require the dedication of extensive resources to establish the merits of all class
5 claims at trial or through contested motion practice and appeals.

6 12. Based upon my experience in litigating wage and hour class actions, I am of the
7 opinion that the proposed Settlement is fair reasonable and adequate and in the best interest of
8 the Class Members, and the Court should grant approval and all its terms.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed on
10 February 19, 2021 at Irvine, California.

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JAMES R. HAWKINS, ESQ.

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[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

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1. This Order incorporates by reference the Settlement Agreement, and unless indicated otherwise, all capitalized terms used herein will have the same meaning as set forth in the Settlement Agreement.

3. The class action settlement set forth in the Settlement Agreement, entered into among the Parties and their counsel, is preliminarily approved as it appears to be proper, to fall within the range of reasonableness, to be the product of arm's-length and informed negotiations, to treat all Class Members fairly, and to be presumptively valid, subject only to any objections that may be raised at or before the final approval hearing.

5. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the action.

6. The Court preliminarily approves the Settlement Agreement, including all the terms and conditions set forth therein and the Class Settlement Amount and allocation of payments.

7. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendant, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

8. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

9. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

10. The Court appoints Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal as the representatives for the Settlement Class conditionally certified by this Order.

11. The Court appoints Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

12. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

13. The following dates shall govern for purposes of this Settlement:

Date	Event
April 7, 2021 (or not later than 15 business days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class Information to the Settlement Administrator.
May 24, 2021 (or not later than 60 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.

Date	Event
July 8, 2021 (or not later than 45 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
July 23, 2021	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.
August 17, 2021 at 11:00 a.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.

14. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Kenneth R. Freeman
Los Angeles Superior Court Judge