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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JULIO MACHADO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC DRAYAGE SERVICES, LLC., a
Delaware limited liability company; and DOES
1 through 100, inclusive,

Defendants.

Case No. CIVSB2124879

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

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

Date: January 31, 2023
Time: 10:0 a.m.
Division: S-26

Action Filed: August 27, 2021
Trial: None set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 January 31, 2023 at 10:00 a.m. in Department S-26 of the above-entitled Court, located at 247 West
4 Third Street, San Bernardino, California 92415, Plaintiff Julio Machado (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

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

9 All current and former Drivers of Defendant Pacific Drayage Services, LLC who
10 worked at any time in California from August 27, 2020 and January 28, 2022.

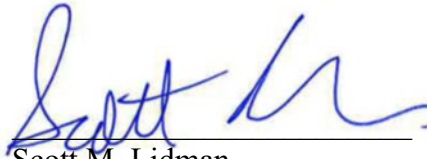
- 11 3. Preliminary appointment of Plaintiff Julio Machado as Class Representative;
12 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
13 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
14 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
15 and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil
16 penalties payable to the California Labor Workforce Development Agency, and attorneys’
17 fees and costs to Class Counsel;
18 6. Appointment of Phoenix Settlement Administrators as the third-party Settlement
19 Administrator for mailing notices; and
20 7. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
21 Class Action and Settlement and Notice of Settlement Award) which is attached to the
22 Settlement as **Exhibit B** and an order that it be disseminated to the proposed Settlement
23 Class Members as provided in the Settlement Agreement.

24 This Motion is based on this notice of motion, the memorandum of points and authorities, the
25 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Julio
26 Machado, and Jodey Lawrence of Phoenix Settlement Administrators and the exhibits attached thereto,
27 the pleadings and other papers filed in this action, and on any further oral or documentary evidence or
28 argument presented at the time of hearing.

1
2 Dated: September 28, 2022
3

Respectfully submitted,
LIDMAN LAW, APC

4
5 By:



6 Scott M. Lidman
7 Attorney for Plaintiff
8 JULIO MACHADO
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Julio Machado (“Plaintiff”) brought this class and representative action against
4 Defendant Pacific Drayage Services, LLC (hereinafter “Pacific Drayage” or “Defendant”). Plaintiff’s
5 primary claims/allegations which are being settled subject to Court approval are that Pacific Drayage: (1)
6 failed to provide accurate, itemized wage statements, and (2) is liable for civil penalties under the Labor
7 Code Private Attorneys General Act of 2004 (“PAGA”) resulting from the wage statement violations.

8 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
9 class action settlement,¹ in which Pacific Drayage has agreed to pay Three Hundred Fifty Thousand
10 Dollars and Zero Cents (\$350,000.00) on behalf of the following Settlement Class:

11
12 All current and former Drivers of Defendant Pacific Drayage Services, LLC who
13 worked at any time in California from August 27, 2020 and January 28, 2022.

14 Significantly, Settlement Class members do not need to file a claim to benefit from the Settlement
15 because all Settlement Class members will automatically receive a payment unless they affirmatively opt-
16 out. After deducting administration costs, Plaintiff’s service award, attorneys’ fees and costs, and the
17 PAGA Payment, the remaining Net Settlement Amount (“NSA”) of approximately \$182,583.33 will be
18 distributed to all Settlement Class members who do not opt-out of the Settlement. There were
19 approximately 269 Settlement Class members as of the date of mediation. With a Net Settlement Amount
20 of \$182,583.33, this means that the average payment to participating Settlement Class members is
21 estimated to be approximately **\$678.75**.

22 Additionally, Five Thousand and Zero Cents (\$5,000.00) of the Gross Settlement Amount has been
23 designated as the “PAGA Amount” as described above. There were approximately 269 PAGA Employees
24 as of the date of mediation. As such, the average individual PAGA Employee settlement payment is
25 projected to be approximately **\$18.59**.

26 This proposed Settlement is well-within the range of possible approval in light of the significant

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

1 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
2 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
3 respectfully requests that the Court grant preliminary approval of the Settlement.

4 **II. SUMMARY OF THE LITIGATION**

5 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH** 6 **NEGOTIATIONS**

7 **1. The Parties**

8 Pacific Drayage provides container drayage services in California. *See* Declaration of Scott M.
9 Lidman (“Lidman Decl.”), ¶ 10. Plaintiff, a former employee, was employed by Pacific Drayage during
10 the relevant time period up until his employment was separated on or about August 5, 2021. Declaration
11 of Julio Machado (“Machado Decl.”), ¶ 2.

12 **2. Procedural History**

13 On August 27, 2021, Plaintiff filed a class action Complaint against Pacific Drayage in San
14 Bernardino County Superior Court. Lidman Decl., ¶ 10

15 After having exhausted his administrative remedies with the California Labor & Workforce
16 Development Agency (“LWDA”) by way of a letter submitted to the LWDA on August 27, 2021 (a true
17 and correct copy of which is attached to the Settlement as **Exhibit A**), on December 17, 2021, Plaintiff
18 filed a First Amended Complaint (“FAC”) against Pacific Drayage, which added a PAGA claim. *Id.*

19 **3. Discovery**

20 After agreeing to participate in early mediation, Pacific Drayage informally produced documents
21 and information relevant to the claims alleged in advance of mediation, including without limitation data
22 to calculate the number of pay periods at issue and information about when Pacific Drayage changed its
23 wage statements on or about January 28, 2022. Lidman Decl., ¶ 11. After a review and analysis of the
24 documents and information produced by Pacific Drayage, Class Counsel drew on their extensive
25 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery
26 allowed the parties to assess the merits and value of Plaintiff’s claims and Pacific Drayage’s defenses
27 thereto, if a settlement could not be reached.
28

1 **4. Arms-Length Negotiations**

2 On August 9, 2022, a mediation was held with Steven G. Mehta, a well-respected wage and hour
3 class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their
4 opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the
5 claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide resolution. *Id.* In the
6 weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class
7 Action and PAGA Settlement (“Settlement”). *Id.*

8 **III. ARGUMENT**

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

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

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

22 **1. Numerosity is Satisfied.**

23 Here, the proposed Settlement Class consists of approximately 269 members (as of the time of
24 mediation), and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl.,
25 ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of
26 a trust sufficiently numerous). Thus, numerosity is satisfied.

27 Further, a class is “ascertainable” where the members “may be readily identified without
28 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*

(2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as “All current and former Drivers of Defendant Pacific Drayage Services, LLC who worked at any time in California from August 27, 2020 and January 28, 2022” which can be ascertained through Pacific Drayage’s employment records. Lidman Decl., ¶ 14.

2. Commonality is Satisfied.

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

Here, Settlement Class members’ claims arise from Pacific Drayage’s common, uniform policies and practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that Pacific Drayage’s common and uniform policies and practices resulted in the following violations: (1) failure to provide accurate, itemized wage statements and (2) liability for civil penalties under the PAGA. As a result of the common and uniform policies and practices that applied to all Settlement Class members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Pacific Drayage failed to furnish accurate, itemized wage statements.

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

3. Typicality is Satisfied.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff’s claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiff was employed by Pacific Drayage during the Class Period as a Driver and was subject to Pacific Drayage’s wage and hour policies at issue in this case. Machado Decl., ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he received inaccurate itemized wage statements, similar to those

received by the Settlement Class members. *Id.* Given that Pacific Drayages’s wage statement policies and practices applied to all Drivers, Settlement Class members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff’s claims and those of the Settlement Class all arise from the same conduct, typicality is satisfied.

4. Adequacy is Satisfied.

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

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

Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶¶ 2-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 2-8; and Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

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

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

1 **1. The Preliminary Approval Standard is Met**

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

10 **a. The Strength of Plaintiff’s Case**

11 Although Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges that there were
12 substantial risks and uncertainty in proceeding with litigation. As described below, Pacific Drayage
13 presented multiple defenses to Plaintiff’s claims, both on the merits and class certification. Thus, while
14 Plaintiff was prepared to litigate these claims through certification, and ultimately trial, success was far
15 from certain.

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

17 Although the parties engaged in informal discovery throughout this action, the parties still had
18 significant formal discovery to complete, including written discovery, party depositions, putative class
19 member depositions, and expert discovery had the matter not settled. Lidman Decl., ¶ 24. Moreover,
20 Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed
21 class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.* Even if the class
22 sought to be certified by Plaintiff was in fact certified, the parties would incur considerably more
23 attorneys’ fees and costs through a possible decertification motion, trial, and possible appeal. *Id.* This
24 Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary
25 approval.

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

27 Plaintiff had not yet filed his motion for class certification and as such, the extent to which
28 Plaintiff’s proposed class was certifiable is somewhat speculative. Absent settlement, there was a risk

that there would not be a certified class at the time of trial.

d. Overview of the Settlement Agreement

If the Court approves this Settlement, Pacific Drayage will pay a Gross Settlement Amount (“GSA”) of \$350,000.00.² Lidman Decl., ¶¶ 13, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$350,000.00
Minus Court-approved attorneys’ fees (update to 1/3 of GSA):	\$116,666.67
Minus Court-approved, verified costs (up to \$20,000):	\$17,500.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$8,250.00
Minus PAGA payment:	\$20,000.00
Net Settlement Amount (“NSA”):	\$182,583.33

With the exception of the Settlement Administrator’s fees, if required by the Settlement Administrator, the Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed. *See* Settlement, ¶ 4.B.

² Defendant represents that there are an estimated 11,894 pay periods worked during the Class Period. If the number of pay periods worked during the Class Period is more than 10% greater than this figure (i.e., if there are 13,084 or more pay periods worked by the settlement Class Members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was 12% increase in the number pay periods worked during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 12%). Settlement, ¶ 4.D.

1 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award
2 to Plaintiff, Settlement Administrator costs, and the PAGA payment, the Settlement requires Pacific
3 Drayage to pay a Net Settlement Amount ("NSA") of at least **\$182,583.33** to all Settlement Class members
4 who do not timely opt out. Lidman Decl., ¶ 13, Exh. 1.

5 According to Pacific Drayage, there are approximately 269 total Settlement Class members (who
6 worked a total of approximately 11,894 pay periods during the relevant time period) and 269 PAGA
7 Employees (who worked a total of approximately 11,894 pay periods during the relevant time period).
8 Lidman Decl., ¶ 14. From the Net Settlement Amount, the Settlement Administrator will calculate each
9 Settlement Class member's Settlement Award based on the following formula:

10 The Net Settlement Amount shall be allocated to Settlement Class members who
11 worked during the Class Period, as follows: each participating Settlement Class
12 member shall receive a proportionate settlement share based upon the number of
13 pay periods worked as a Driver during the Class Period, the numerator of which is
14 the Settlement Class member's total pay periods worked as a Driver during the Class
15 Period, and the denominator of which is the total pay periods worked as Drivers by
16 all Settlement Class members (who do not opt out) who worked during the Class
17 Period.

18 Settlement, ¶ 5.B.i.

19 Additionally, Five Thousand Dollars and Zero Cents (\$5,000.00) of the Gross Settlement Amount
20 has been designated as the "PAGA Amount" as described above. Each PAGA Employee shall receive a
21 portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during
22 this PAGA Period which will be calculated by multiplying the PAGA Amount by a fraction, the numerator
23 of which is the PAGA Employee's number of pay periods worked as a non-exempt employee during this
24 time period, and the denominator of which is the total number of pay periods worked by all PAGA
25 Employees. Settlement, ¶ 5.C.

26 Thus, the average Individual Settlement Payment is projected to be approximately **\$678.75 (which**
27 **is approximately \$15.35 per pay period)** and the average individual PAGA Employee settlement
28

1 payment is projected to be approximately **\$18.59 (which is approximately \$0.42 per pay period)**.
2 Lidman Decl., ¶ 14.

3 Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packet
4 to opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without
5 unduly delaying the Settlement. *See* Settlement, ¶ 10.C. Those Settlement Class members who do not
6 opt-out of the Settlement will be bound by its terms and will release all claims against Pacific Drayage
7 included within the Settlement, for the period between August 27, 2020 through January 28, 2022. *See*
8 Settlement, ¶ 2. However, the release will only be effective on the date that Pacific Drayage fully funds
9 the Gross Settlement Amount. Settlement, ¶ 3.F.

10 **e. The Parties Engaged in Fair and Honest Negotiations.**

11 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
12 of a mediator. After the detailed review of the information, data and other documents and policies
13 produced by Pacific Drayage, Class Counsel drew on their extensive experience in similar cases to assess
14 the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 11. This discovery allowed the parties
15 to assess the merits and value of Plaintiff's claims and Pacific Drayage's defenses thereto, if a settlement
16 could not be reached. *Id.*

17 On August 9, 2022, the parties participated in mediation with Steven G. Mehta, Esq. a preeminent
18 wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously
19 debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal
20 basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-wide resolution.
21 *Id. Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the
22 Settlement. Lidman Decl., ¶ 12, Exhibit 1.

23 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of
24 factual investigation and data analysis; the exchange of substantial information and class data, including
25 timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an
26 experienced wage and hour class action mediator. *See* Lidman Decl., ¶¶ 11-12; *see also* Kullar, *supra*,
27 168 Cal.App.4th at 130. Thus, these factors support preliminary approval.

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

f. Amount Offered in Settlement Given Realistic Value of Claims

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

Pacific Drayage Issued Inaccurate Itemized Wage Statements: Plaintiff alleges that Pacific Drayage issued inaccurate wage statements in violation of Labor Code § 226 because the wage statements failed all applicable hourly rates of pay and failed to include total hours worked during the pay period, in violation of California law. Lidman Decl., ¶ 16. Plaintiff’s data analysis reflected that there were approximately 11,894 wage statements issued up until January 28, 2022 when Pacific Drayage changed its wage statements to include this information. *Id.* Therefore, Plaintiff calculated Pacific Drayage’s maximum exposure for wage statement violations at approximately \$1,175,950 (\$50.00 x 269 current employees + \$100 x 11,625 subsequent wage statements). *Id.*

Pacific Drayage contends that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 17. Pacific Drayage also contends that as of January 28, 2022 it changes its wage statement policies and procedures. As such, Plaintiff discounted the calculated exposure by 45% for a risk of non-certification and an additional 45% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$355,724.88. *Id.*

Pacific Drayage is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 18. Plaintiff calculated Pacific Drayage’s maximum exposure at \$1,189,400 (11,894 pay periods x \$100 initial violation rate). *Id.*;

1 *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial” violation rate
2 applies until employer is notified that it is violating a Labor Code provision).

3 Pacific Drayage argues that Plaintiff’s PAGA claim will fail for the same reasons that his
4 underlying claim will fail. Lidman Decl., ¶ 19; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,
5 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”).
6 Pacific Drayage also maintains that, given its good faith defenses, this Court would exercise its discretion
7 to substantially reduce any PAGA penalties if it were to find Pacific Drayage liable for Plaintiff’s claim,
8 especially given the fact that Pacific Drayage changed its wage statements and also in consideration that
9 there was no injury since only simple math was required to remedy the missing information. *See* Lab.
10 Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
11 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
12 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).
13 *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 55% for a risk of being unsuccessful
14 on the merits, and an additional 40% to account for the possibility of this Court reducing penalties, to arrive
15 at an estimated exposure of \$321,138.00. *Id.*

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

17 Using these estimated figures for each of the claims described above, Plaintiff predicted the
18 realistic total recovery for the Settlement Class would be approximately \$676,862.88. Lidman Decl., ¶
19 20. The proposed settlement of \$350,000.00 therefore represents approximately 52% of the reasonably
20 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
21 will provide tangible monetary relief to Settlement Class members, and will still provide an average
22 recovery to Settlement Class members of approximately **\$678.75** and an average individual PAGA
23 Employee settlement payment to be approximately **\$18.59**.

24 The settlement is reasonable especially in light of the significant litigation risks and will provide
25 tangible monetary compensation for disputed claims. Indeed, the percentage of the liability exposure
26 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan.*
27 *Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement
28 representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459

(approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

h. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl., ¶¶ 2-8; Nguyen Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Pacific Drayage’s policies and wage statements, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl., ¶¶ 10-20. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

i. Attorneys’ Fees and Costs

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

1 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
2 is estimated to be \$116,666.67, and up to \$17,500.00 in verified costs reimbursement. *See* Settlement, ¶
3 4.C.4; Lidman Decl., ¶ 21. Plaintiff submits the requested fee is fair compensation for undertaking
4 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Further,
5 Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 22.
6 Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing
7 Plaintiff's claims, conducting legal research, reviewing Pacific Drayage's documents and policies,
8 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
9 Motion, and otherwise litigating the case. Lidman Decl., ¶ 21. Class Counsel expect to expend additional
10 attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions
11 from Settlement Class members, preparing the final approval papers and attending the Final Approval
12 hearing. *Id.*

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

19 **j. Administration Costs**

20 Phoenix Settlement Administrators ("PSA") fees and expenses are estimated not to exceed
21 \$8,250.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval
22 filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class
23 size of approximately 269 Settlement Class members and the costs and expenses associated with
24 administering the notices and distributing the awards. Additionally, PSA will translate the Notice Packet
25 and mail the Notice in both English and Spanish to Settlement Class members.

26 **k. Class Representative Service Award**

27 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class
28 representatives for work done on behalf of the class [and] to make up for financial or reputational risk

undertaken in bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of \$5,000.00 for his services to the Settlement Class and a general release of all claims against Defendant. Lidman Decl., ¶ 23, Exh. 1 (Settlement, ¶ 7). As will be fully briefed at the time of final approval, Plaintiff’s requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims and waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 23; Settlement ¶ 7, Machado Decl., ¶ 7.

l. PAGA Penalty

The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$15,000.00. Settlement ¶ 4.C.5. This \$20,000.00 represents roughly 6% of the \$350,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

m. Taxes

For purposes of calculating applicable taxes, each Settlement Award made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 issued to each Class Member and PAGA Employee. Settlement, ¶ 5.E.

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1 **n. Uncashed Funds**

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

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

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

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

16 Before the final approval hearing, the Court requires adequate notice of the settlement be given
17 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
18 Packet by first-class regular U.S. Mail, postage prepaid, using last known mailing address information
19 provided by Pacific Drayage. *See* Settlement, ¶ 10. This manner of giving notice is the “best notice
20 practicable” under the circumstances because it provides “individual notice to all members who can be
21 identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here,
22 Plaintiff proposes that the Settlement be administered by Phoenix Settlement Administrators (“PSA”), an
23 experienced class action settlement administrator to mail the Notice Packets in both English and Spanish.
24 *See generally* Lawrence Decl. and attached exhibits. Settlement Class members’ addresses will be
25 ascertainable through Pacific Drayage’s personnel and payroll records, which Pacific Drayage will
26 provide to PSA within thirty (30) calendar days of preliminary approval of the Settlement. *See* Settlement
27 ¶ 10.A. Within ten (10) business days of receipt of the Settlement Class members’ addresses, PSA will
28 run the addresses through the United States Postal Service Notice of Change of Address database (which

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

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

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

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

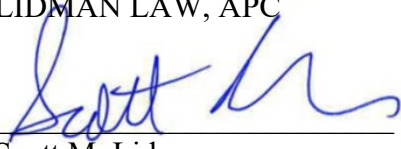
20 **IV. CONCLUSION**

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

24 Dated: September 28, 2022

Respectfully submitted,
LIDMAN LAW, APC

26 By:


Scott M. Lidman
Attorney for Plaintiff
JULIO MACHADO