

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Jeanne Sarmiento, Esq. (#309660)
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Jeanne@jameshawkinsaplc.com

Attorneys for Plaintiffs ANDREW D. TAPPIN, DONYEISHA MISH,
DARNELL LEE, LUIS ROBLES, XOCHITL VELASCO and
VICTOR GONZALEZ.

[Additional Counsel Listed On Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

ANDREW D. TAPPIN, DONYEISHA MISH,
DARNELL LEE, LUIS ROBLES, XOCHITL
VELASCO, and VICTOR GONZALEZ,
individually and on behalf of all others similarly
situated, and on behalf of the general public as
private attorney general,

Plaintiff,

vs.

TFORCE FREIGHT, INC., a Virginia
Corporation; and DOES 1 through 50, inclusive,
Defendants.

Case No. 34-2022-00314820-CU-OE-GDS

Assigned for All Purposes to:
Hon. Jill H. Talley
Dept. 23

MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT

Date: June 21, 2024
Time: 9:00 a.m.
Dept. 23

Reservation No.: A-314820-003

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
Jeffrey S. Herman (State Bar #280058)
Sergio Julian Puche (State Bar #289437)
Trevor G. Moran (State Bar #330394)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

MAKAREM & ASSOCIATES APLC

Ronald W. Makarem, Esq. (SB#180442)
Samuel Almon, Esq. (SB #243569)
Daniel J. Bass, Esq. (SB#287466)
11601 Wilshire Boulevard, Suite 2440
Los Angeles, California 90025-1760
Telephone: (310) 312-0299;
Facsimile: (310) 312-0296

Attorneys for Plaintiffs ANDREW D. TAPPIN, DONYEISHA MISH,
DARNÉLL LEE, LUIS ROBLES, XOCHITL VELASCO and
VICTOR GONZALEZ.

1 **I. INTRODUCTION**

2 Plaintiffs Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, Victor Gonzalez, and
3 Andrew Tappin hereby move the Court for an order granting preliminary approval of a proposed
4 non-reversionary class action settlement to resolve wage and hour claims on behalf of approximately
5 3,210 individuals employed by Defendant TForce Freight, Inc. (“TForce Freight” or “Defendant”)
6 as non-exempt employees during the period of September 13, 2016, through the Preliminary
7 Approval Date. The proposed \$8,250,000 settlement will provide at least \$5,204,000 in cash
8 payments to the settlement class, with an average award of about \$1,621. The balance of
9 approximately \$3,046,000 will cover modest enhancement awards to the named Plaintiffs,
10 reasonable attorney’s fees and actual litigation costs, settlement administration costs, and payment
11 of civil penalties to the state. The settlement is the product of Plaintiffs’ pre- and post-filing
12 investigation, extensive formal and informal discovery, and arms-length and adversarial negotiations
13 overseen by experienced and well-regarded mediator Michael Young, Esq.

14 As demonstrated below, the settlement is within the “range of reasonableness” for
15 preliminary approval. Plaintiffs’ counsel believes the settlement is a significant result for the class
16 given the substantial risks inherent in this matter. Accordingly, Plaintiffs request the Court enter an
17 order: (1) granting preliminary approval to the proposed class action settlement; (2) conditionally
18 certifying the settlement class as defined below; (3) appointing Makarem & Associates APLC, James
19 Hawkins APLC, and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (4)
20 appointing plaintiffs Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, Victor Gonzalez,
26 and Andrew Tappin as Class Representatives; (5) appointing CPT Group, Inc. as the Settlement
22 Administrator; (6) approving the form of notice to the class and the procedure for providing such
23 notice; and (7) scheduling a final fairness hearing.

24 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

25 Defendant TForce Freight, Inc., formerly known as UPS Ground Freight, a subsidiary of TFI
26 International, is a renowned freight carrying corporation founded in 1935. It employs thousands of
27 employees and owns and operates over 20 package and delivery locations throughout California.
28 Plaintiffs worked for Defendant during the class period in various positions, including parts, dock,

1 dispatch, and appointment clerk, delivery driver, and mechanic/test driver. [Declaration of Samuel
2 D. Almon (“Almon Decl.”), ¶¶ 4-5.]

3 Plaintiffs collectively allege a number of wage and hour violations by Defendant. First, they
4 allege TForce Freight failed to pay all wages due, including minimum and overtime wages for hours
5 worked off the clock and while subject to employer the control, including time spend donning and
6 doffing uniforms and undergoing security checks and drug testing, time spent working after having
7 meal periods interrupted, and time deducted by TForce Freight for a so-called “grace period” prior
8 to the scheduled start of a shift even though the Class Members were clocked in for work, beginning
9 their work duties, and under the control of Defendant. Next, Plaintiffs alleged TForce Freight failed
10 to provide timely and uninterrupted duty-free meal and rest periods. Plaintiffs argued that, in addition
11 to maintaining non-compliant written meal and rest break policies, review of the time and payroll
12 data provided by Defendant suggests significant de facto break violations for late, short, or missed
13 meal breaks and further that second meal breaks were practically non-existent on shifts of 10+ hours.
14 Plaintiffs also allege they were required to use their personal cell phones and incur driving expenses
15 for work purposes without any reimbursement. Plaintiffs further alleged that Defendant did not
16 incorporate all non-discretionary incentive compensation into the regular rate of pay and failed to
17 provide sick pay and COVID-19 sick pay. Finally, Plaintiffs allege derivative violations for failing
18 to provide accurate itemized wage statements and failing to timely pay wages upon separation of
19 employment. [Almon Decl., ¶ 6.]

20 Based on these allegations, Plaintiffs filed several cases against TForce. On March 10, 2021,
26 Plaintiff Donyeisha Mish filed a putative class action in Alameda County Superior Court entitled
22 *Mish v. UPS Ground Freight, Inc.*, Case No. RG21091722. Defendant removed the *Mish* Class
23 Action to the United States District Court for the Northern District of California, where it is currently
24 pending under Case No. 3:21-cv-04094-EMC. Plaintiffs Darnell Lee, Luis Robles, and Xochtil
25 Velasco later were added as party-plaintiffs and proposed class representatives. On July 14, 2021,
26 Plaintiff Mish filed her putative representative action under PAGA in Alameda Superior Court in an
27 action entitled *Mish v. UPS Ground Freight, Inc.*, Alameda Superior Court Case No. RG21105108.
28 [Almon Decl., ¶ 7; Exh. 2.]

1 On November 21, 2021, Plaintiff Victor Gonzalez filed his putative class action in Riverside
2 County Superior Court entitled *Gonzalez v. TForce Freight, Inc.*, Case No. CVRI2105223. The
3 *Gonzalez* Class Action was subsequently removed, transferred, and consolidated with the *Mish* Class
4 Action in the Northern District of California under Case No. 3:22-cv-01177. After providing
5 appropriate notice to the LWDA, on November 21, 2021, Plaintiff Gonzalez filed his putative
6 representative action under PAGA in Riverside Superior Court, in an action entitled *Gonzalez v.*
7 *TForce Freight, Inc.*, Riverside County Superior Case No. CVRI2105225.¹ [Almon Decl., ¶ 8.]

8 On November 24, 2021, Plaintiff Andrew Tappin filed a putative class action in Sacramento
9 Superior Court in an action entitled *Tappin v. TForce Freight, Inc.*, Case No. 34-2021-00311727.
10 The *Tappin* Class Action was subsequently removed, transferred, and consolidated with the *Mish*
11 Class Action in the Northern District of California under 2:22-cv-00322. After providing notice to
12 the LWDA, on January 31, 2022 Plaintiff Tappin filed his putative representative action under PAGA
13 in Sacramento Superior Court, in an action entitled *Tappin v. TForce Freight, Inc.*, Sacramento
14 County Superior Court Case No. 34-2022-00314820.² [Almon Decl., ¶ 9.]

15 TForce Freight has at all times denied Plaintiffs' collective allegations and maintained its
16 meal break and wage and hour policies and procedures comply with California law, that it provided
17 its employees with required meal and rest breaks, that it properly tracked employee time and paid
18 Plaintiffs and all other employees all wages due, and that any use of personal cell phones was for the
19 employee's own convenience and not reimbursable as a necessary business expense, and that it
20 otherwise reimbursed employees for business expenses. Additionally, Defendant strongly contends
26 the case cannot be maintained as any kind of class or representative action, arguing, for instance, that
22 to the extent Class Members missed meal or rest breaks, that such breaks were non-compliant with
23 policy, or that any unpaid "off the clock" work or personal cell phone use for work purposes occurred,
24 it was intermittent and infrequent, against company policy, and done without the company's
25 knowledge. Thus, per TForce Freight, evidence of such violations would be purely anecdotal and
26 therefore individualized issues predominate and trial would be unmanageable. [Almon Decl., ¶ 10.]

28 ¹ Plaintiff Gonzalez's PAGA notice letter is attached to the Declaration of Kyle Nordrehaug as Exhibit 2.

² Plaintiff Tappin's PAGA notice letter is attached to the Declaration of Samuel Almon as Exhibit 4.

1 Since Plaintiffs filed their complaints, the Parties engaged in formal discovery, both
2 propounding and responding to written discovery, and Plaintiffs deposed six of TForce Freight's
3 managers. After agreeing to mediation, the Parties also undertook additional informal discovery to
4 facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently,
5 Plaintiffs' counsel reviewed payroll records, personnel policies/handbooks, meal and rest break
6 policies, personnel files, and a random sampling of paystubs and time records produced by TForce
7 Freight for about 20% of the class. Defendant also provided documents and information reflecting
8 the estimated total amount of workweeks and pay periods the Class Members worked, and average
9 hourly pay rates, among other relevant data. Plaintiff had that data reviewed and analyzed by Berger
10 Consulting Group to assist with determining potential break violation rates, amount of underpaid rest
11 and recovery time and unproductive time, etc., and preparing a damages model. [Almon Decl., ¶
12 11.]

13 The Parties then engaged Michael Young, Esq., a highly respected mediator with extensive
14 wage and hour class action experience and, in May 2022, participated in a full-day mediation with
15 Mr. Young. Throughout the day, the arms-length negotiations were hard-fought and adversarial as
16 the Parties exchanged extensive information on their legal and factual positions, and made numerous
17 offers and counter-offers. The Parties were not able to reach a settlement at the mediation. Over the
18 following several months, however, they continued to negotiate with Mr. Young's assistance, and he
19 ultimately issued a mediator's proposal that was accepted by all Parties in December 2022. The
20 Parties then collaboratively drafted the Stipulation of Class and PAGA Representative Action
26 Settlement ("Settlement Agreement") setting forth the full and final settlement terms, and a true and
22 correct, fully-executed copy of the Settlement Agreement is attached to the Almon Declaration as
23 Exhibit 1. [Almon Decl., ¶ 12.]

24 Finally, in order to fully effectuate the Parties' agreement to resolve all pending cases on a
25 global basis and allow one court to preside over the approval process, they also agreed to stipulate
26 to the filing of an amended complaint in this action to assert both class and PAGA claims that include
27 all the claims from all matters as proposed class and PAGA representatives. On January 5, 2024,
28 Plaintiffs filed their First Amended Complaint, which is the operative complaint for purposes of

settlement. [Almon Decl., ¶ 13.]

III. THE PROPOSED SETTLEMENT TERMS

Under the proposed settlement, TForce Freight will pay \$8,250,000.00 into a common fund, the Gross Settlement Amount (“GSA”). Reasonable attorney’s fees of up to one-third of the GSA, or \$2,750,000, actual litigation costs of up to \$50,000, modest enhancement awards of up to \$10,000 for each plaintiff (\$60,000 total), settlement administration costs of no more than \$21,000, and \$165,000 for the settlement of alleged civil penalties under PAGA,¹ will be paid from the GSA. The remainder of approximately \$5,204,000 will be allocated among the Participating Class Members based on their total weeks worked during the Class Settlement Period. No portion of the GSA will revert to Defendant. [Almon Decl., ¶¶ 14-23, 26.]

A. Certification of the Settlement Class

The settlement provides for conditional certification of a settlement class including all individuals who worked for Defendant as a non-exempt employee in California during the Class Period, which runs from May 21, 2017 through the Preliminary Approval Date. TForce estimates the Settlement Class consists of approximately 3,210 individuals. [Almon Decl., ¶ 24.]

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates TForce Freight to pay \$8,250,000 to resolve the Settlement Class’s claims, inclusive of attorney’s fees and costs. At least \$5,204,000 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Thirty-three of each settlement share will be allocated to wages and the remaining sixty-seven percent will be allocated to penalties and interest. TForce Freight will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court’s approval, any amounts not claimed (because a Class and PAGA Member does not cash his or her settlement check) will be forwarded to the California State Controller’s Unclaimed Property Fund. [Almon Decl., ¶ 14, 21.]

¹ Consistent with PAGA, \$123,750 of that amount will go the LWDA for the State’s share of the civil penalties, and the remaining \$41,250 will be distributed pro rata to the Aggrieved Employees (defined as all individuals employed as non-exempt employees during the PAGA period of March 17, 2020 to the Preliminary Approval Date).

1 Each Participating Class Member will receive a share of the Net Settlement Amount based
2 on his or her position held and total weeks worked for TForce Freight during the Class Settlement
3 Period while employed as a non-exempt employee. Thus, each Class Member's Individual
4 Settlement Payment will be calculated using criteria typically used in determining appropriate
5 amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks, reimbursement
6 for alleged necessary and required business expenses, and potential statutory penalties under
7 applicable law. These methods are intended to ensure each Class Member receives a portion of the
8 available settlement funds corresponding to the relative value of his or her potential claims. The
9 proposed allocation provides a reasonable way to compensate Class Members based on the amount
10 of time they worked for Defendant, and the number of instances they missed a break, were not
11 provided compensation in lieu of such missed breaks, or lost wages due to Defendant's alleged
12 improper payroll practices. [Almon Decl., ¶¶ 22-23.]

13 The average class settlement award is estimated to be around \$1,621. Per TForce Freight, as
14 of the mediation, there were approximately 3,210 Settlement Class Members projected through April
15 2, 2023. [Almon Decl., ¶¶ 22-23.]

16 As discussed below, the overall settlement amount is reasonable in light of the considerable
17 risks associated with Plaintiffs' claims as well as the delay and risk posed by continuing to litigate
18 such disputed allegations. In Plaintiffs' counsel's collective judgment, the total value recovered for
19 the class is substantial and in the range of reasonableness.

20 **C. Settlement Administration**

26 Subject to the Court's approval, the Parties have agreed on CPT Group, Inc. as the Settlement
22 Administrator. CPT is qualified and has significant experience administering class action
23 settlements, including numerous wage and hour matters. CPT's fees will not exceed \$21,000. [Almon
24 Decl., ¶ 20; Declaration of Julie Green, ¶¶ 2-7, Exhs. A-B.]

25 **D. The Class Notice**

26 The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about this
27 case and explains the basic settlement terms in plain language. The Notice also sets forth the
28 individualized information used to calculate Class Members' Individual Settlement Payments and

1 each Class Member's estimated Individual Settlement Payment. The Notice likewise details the
2 procedures for Class Members to dispute their Eligible Workweeks and Pay Periods, the procedure
3 for submitting an objection to the Settlement, and the procedure to request exclusion. In sum, the
4 Notice provides the Class Members with the information necessary to evaluate the Settlement,
5 provides fair opportunity to participate in, opt out of, or object to the proposed Settlement, and
6 otherwise complies with California Rules of Court 3.769(f) and 3.766(d). Coupled with the notice
7 procedure, the proposed Notice provides the Class with the best notice practicable. [Almon Decl.,
8 ¶¶ 31-33.]

9 **E. Right to Correct Information, Opt Out, or Object**

10 Class Members will have forty-five (45) days to dispute the Eligible Workweeks and Pay
11 Periods in their Notice used to calculate their Individual Settlement Payment and Individual PAGA
12 Payment, and also have 45 days to submit any objections to the settlement or to request exclusion.
13 In the event a Class Member disputes their Eligible Workweeks and Pay Periods, the Settlement
14 Administrator will jointly work with Class Counsel and Defendant's Counsel to resolve the dispute
15 in good faith. If the Parties cannot agree on the Eligible Workweeks or Eligible Pay Periods to be
16 credited to that Participating Class Member or PAGA Member, the Court shall make the final
17 decision based on the information presented by the individual and the Parties. [Almon Decl., ¶¶ 34-
18 37.]

19 **F. Release of Claims**

20 All Participating Class Members will be deemed to release Defendant from all class claims
26 alleged in the operative complaint, or that could have been brought based on the allegations in the
22 operative complaint from September 13, 2016, through the end of the Class Settlement Period, and
23 the PAGA Members will release all claims under PAGA for the PAGA Settlement Period of May
24 10, 2020, through the end of the Class Settlement Period. The releases are limited to the claims that
25 were actually pleaded or could have been pleaded based on the alleged facts in the operative
26 complaint. [Almon Decl., ¶¶ 25, 29-30.]

27 **G. Attorney's Fees and Costs, and Plaintiffs' Enhancement Awards**

28 The settlement provides Defendant will not oppose a request for reasonable attorney's fees

not to exceed one-third of the Gross Settlement Amount, or \$2,750,000.00, nor will it oppose a request for reimbursement of actual litigation costs and expenses of up to \$50,000.00. Defendant also will not oppose a request for an enhancement award to each Plaintiff of not more than \$10,000.00 (for a total of \$60,000) in recognition of their time spent on this matter, the risks each undertook on behalf of the class, and the benefit conferred to the class. Plaintiffs' counsel will provide the Court with appropriate summaries and evidence of their efforts and time records in anticipation of the Final Approval Hearing, and each Plaintiff has submitted a declaration herewith. If the Court approves less than the above amounts, the difference will remain in the Net Settlement Amount for distribution to the Participating Class Members. [Almon Decl., ¶¶ 17, 19, 67-70.]

H. PAGA Claims and Notice to the LWDA

The Parties allocated \$165,000 to the settlement of claims for civil penalties under PAGA, as addressed in more detail below. As required by Labor Code section 2699(l)(2), Plaintiffs gave notice of the settlement and preliminary approval hearing to the LWDA via its online portal. [Almon Decl., ¶ 26; Exh. 3.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via a two-step process to determine, under all the circumstances, if the proposed settlement is fair, reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

The first step is a motion for preliminary approval, through which the parties present the court

1 with the proposed settlement and seek a determination if it is sufficiently fair and reasonable to
2 warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of Court
3 3.769(c). This preliminary evaluation determines if the proposed settlement is within the “range of
4 reasonableness” and if notice should be provided to the class regarding the settlement’s proposed
5 terms and conditions, and whether a final fairness hearing should be scheduled. Wershba, 91
6 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v. TouchTWC Ins. Servs. (1994) 27
7 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring settlement of class
8 actions, courts generally apply a presumption of fairness to class action settlements when (1) the
9 settlement results from arms-length bargaining, (2) investigation and discovery are sufficient to allow
10 counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the
11 percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

12 If the court grants preliminary approval, it then orders the class be given notice in an
13 appropriate manner, establishes a schedule and procedures for class members to request exclusion or
14 object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees and
15 costs, and any enhancement for the class representative(s), is filed subsequent to preliminary
16 approval and heard with the motion for final approval, as part of the second step of the two-step
17 approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

18 The proposed settlement in this matter warrants preliminary approval under the liberal
19 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
20 represents a favorable result for the class. For purposes of this proposed settlement only, Defendant
26 has agreed to not oppose certification, while retaining all rights to challenge certification of a class
22 or maintenance of a representative PAGA action in the event that the Court does not approve the
23 proposed settlement.

24 **B. The Proposed Settlement Class Should Be Conditionally Certified**

25 The purpose of conditional class certification for purposes of settlement is to facilitate
26 provision of notice of the proposed settlement’s terms, and the date and time of the final fairness
27 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
28 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v. Superior

1 Court (2003) 113 Cal.App.4th 836, 839 (“[I]t is well established that trial courts should use different
2 standards to determine the propriety of a settlement class.”)

3 In the present matter, conditional certification is proper since this matter satisfies all
4 requirements for class certification under Code of Civil Procedure section 382. First, the class is both
5 sufficiently numerous, consisting of approximately 3,210 individuals, and ascertainable by reference
6 to Defendant’s personnel and payroll records. [Almon Decl., ¶ 38.] Next, Plaintiffs all are adequate
7 class representatives, as their claims do not conflict with and are not antagonistic to the claims of
8 other Class Members. Further, their claims are typical given each is a member of the class and their
9 respective claims arise from the same employment practices and courses of conduct that give rise to
10 the claims of the other Class Members. [Almon Decl., ¶ 39; Declaration of Donyeisha Mish,
11 Declaration of Darnell Lee, Declaration of Luis Robles, Declaration of Xochitl Velasco, Declaration
12 of Victor Gonzalez, Declaration of Andrew Tappin.] Lastly, Plaintiffs’ counsel are experienced and
13 adequate class counsel. [Almon Decl., ¶¶ 59-66; Declaration of James Hawkins (“Hawkins Decl.”),
14 ¶¶ 3-4; Declaration of Kyle Nordrehaug (“Nordrehaug Decl.”), ¶¶ 3-5.] Although TForce Freight
15 was prepared to vigorously dispute this conclusion, it does not oppose it for settlement purposes only.

16 In addition, common questions of law and fact predominate – particularly for purposes of a
17 settlement class – as the Class Members all were subject to the same wage and hour policies. Since
18 the focus of the claims against TForce Freight concerns the legality of common policies applied
19 uniformly to the entire class, common issues predominate over individualized inquiries concerning
20 liability. TForce Freight’s de facto policy of not compensating for time spent donning and doffing, or
26 undergoing security checks, is company-wide policy applied equally and consistently to all Class
22 Members, and this policy is either compliant with California law or it is not. Regardless of that
23 determination, it will decide liability for all Class Members one way or another. Similarly, whether
24 TForce Freight’s break policies were legally compliant present another common issue. [Almon Decl.,
25 ¶ 40] Again, although TForce Freight was prepared to vigorously dispute this conclusion, it does not
26 oppose it for settlement purposes only.

27 By now it is well-settled that a theory of recovery asserting the existence of a uniform policy
28 violating California law is sufficient to satisfy the requirements for class certification. Jones v.

1 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
2 consistently applied to a group of employees is in violation of the wage and hour laws are of the sort
3 routinely, and properly, found suitable for class treatment”); Williams v. Superior Court (2013) 221
4 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law that
5 supports commonality for class certification”). Lastly, a class action is superior to other means for
6 the fair and efficient adjudication of this controversy. [Almon Decl., ¶ 41.]

7 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is**
8 **within the Range of Reasonableness**

9 The proposed settlement resulted from serious, arms-length negotiations facilitated by
10 respected mediator Michael Young, Esq., who has extensive experience mediating wage and hour
11 class actions. [Almon Decl., ¶ 12.] Plaintiff’s counsel Ronald W. Makarem, Samuel Almon and
12 Daniel J. Bass of Makarem & Associates, APLC, Norman B. Blumenthal, Kyle R. Nordrehaug,
13 Aprajit Bhowmik Nicholas J. De Blouw, Jeffrey S. Herman and Sergio J. Puche of Blumenthal
14 Nordrehaug Bhowmik De Blouw LLP, and James R. Hawkins, Gregory Mauro, Michael Calvo and
15 Jeanne Sarmiento of James Hawkins APLC, all have years of litigation experience, including
16 litigating wage and hour class actions. Plaintiffs’ counsel are well-qualified to evaluate the risks and
17 benefits of pursuing further litigation or settling the matter. [Almon Decl., ¶¶ 59-66; Hawkins Decl.,
18 ¶¶ 3-4; Nordrehaug Decl., ¶¶ 3-5.]

19 California law recognizes several factors bearing on the fairness, adequacy, and
20 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
26 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)
22 the strength of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further
23 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views
24 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
25 below, the proposed settlement satisfies these requirements.

26 Prior to mediation, the parties engaged in extensive formal and informal discovery to facilitate
27 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding TForce
28 Freight’s payroll practices, pay stubs and time records for a sampling of Class Members, meal and

rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for meal and rest break violation rates, time spent working off the clock due to donning/doffing, security checks, etc., and other issues relevant to liability and damages. Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Almon Decl., ¶¶ 11, 47.]

Next, the proposed settlement falls within the range of reasonableness warranting preliminary approval. The proposed settlement involves a significant sum that, when distributed, will confer direct monetary benefits on the Class Members. As described above, each Class Member will be entitled to a monetary payment without having to file a claim and each payment will be relative to the value of his or her potential claims.

Plaintiffs' analysis was supported by the formal and informal discovery described above, which permitted Plaintiffs' counsel to estimate potential damages on various theories of liability. Using that data, Plaintiffs ran various calculations and estimated TForce Freight's likely maximum exposure on the class claims at approximately \$79.26 million, including about \$10.1 million on the off the clock/unpaid wage claims, approximately \$28 million on the meal period claims, about \$36.1 million on the rest period claims, approximately \$1.91 million on the expense reimbursement claim, around \$8.82 million on the wage statement claims, and \$13.71 million on the waiting time penalty claims. [Almon Decl., ¶ 48.] Plaintiffs and their counsel substantially discounted the value of these claims, however, in light of Defendant's multi-layered defenses on both class certification and on the merits, and the multiple and considerable risks posed by proceeding with the litigation. For its part, TForce Freight maintained that Plaintiffs' estimates were "wildly" inflated.

Informing the settlement value was the fact that Plaintiffs faced the risk of failing to certify their proposed class (in whole or in part) and failing to maintain a representative PAGA action for a variety of reasons. For instance, the unpaid wage claims focus primarily on TForce Freight's alleged failure to pay Class Members at least minimum wages and/ or overtime wages for all of their hours

1 worked. First, Plaintiffs’ allege a policy requiring them to go through a lengthy donning/doffing
2 process with their work uniforms, and also undergoing a security checkpoint process when entering
3 and leaving the work facility. Per Plaintiffs, TForce Freight required Class Members to go through
4 the donning and doffing process and security checkpoint *before* clocking in at the beginning of their
5 shifts, and *after* clocking out for payroll purposes at the end of their shifts, which could take 15-20
6 minutes each shift. Next, Plaintiffs allege they were continually subjected to underpayments for
7 “Unpaid Time” where the analysis of the payroll data indicates that if an employee clocked in to begin
8 work duties prior to the scheduled start of a shifts, Defendant would deduct that time from the Class
9 Members’ pay for the time that they were clocked in prior to the scheduled beginning of their shifts.
10 This unpaid time, listed as a “Grace Before Time” entry on the wage statements, was deducted despite
11 the Class Members being clocked in for work, beginning their work duties, and under the control of
12 Defendant and resulted in an average underpayment of 2.7 minutes per shift. [Almon Decl., ¶ 49.]

13 In response, TForce Freight argued its payroll policies are fully compliant, that it properly
14 tracked and paid for all hours worked at the appropriate hourly wage. Defendant also argued that, if
15 any Class Members failed to record and report time it was in violation of company policy and would
16 have occurred on a haphazard and individual basis. For example, an employee could not begin work
17 until the start of their shift, but if an employee clocked in a few minutes early before the start of their
18 shift, it would be difficult to determine, on a shift-by-shift basis, if that employee was actually
19 working versus undertaking some other personal activity such as talking on phone, getting coffee,
20 etc. Accordingly, Defendant argued the issue would not be certifiable since it would require
26 individualized inquiries whether any compensable “off the clock” work occurred and why it was or
22 was not documented and paid for. Defendant also emphasized using a “grace period” is permissible,
23 and that and time rounding is permissible under California law so long it has an overall neutral effect
24 on employee time and compensation. See’s Candy Shops, Inc. v. Superior Court (2012) 210
25 Cal.App.4th 889. [Almon Decl., ¶ 50.]

26 On the meal and rest break claims, Plaintiff contends TForce Freight’s written policies are
27 not fully compliant, and Plaintiffs’ review of the time and payroll records provided suggested these
28 deficiencies in the written policies affected employee breaks. Based on Plaintiff’s analysis, Plaintiffs

1 and the Class Members were consistently required to work in excess of four (4) hours (or major
2 fraction thereof) without receiving lawful ten (10) minute rest periods. Even when they were provided
3 an opportunity to take such a break within each four hour period, they were consistently denied
4 compliant rest periods because such rest periods were interrupted and/or cut short by management
5 and other employees requiring assistance, and management would insist the work be done
6 immediately rather than after the rest period or they would be required to perform more work than
7 could possibly performed in their allotted time order to take such breaks. [Almon Decl., ¶ 51.]

8 In response, TForce Freight argued its written policies are fully compliant, that managers
9 routinely communicated meal break entitlements to employees, that it provided employees with the
10 opportunity to receive all required breaks, and that many Class Members waived their second meal
11 periods, and that many employees were not subject to California's meal and rest break rules due to
12 recognized federal preemption and state exclusions. Defendant further maintained that, in light of its
13 compliant policies, whether a Class Member missed a meal period, received a late meal period, or
14 missed a rest break would have been aberrational and against company policy. Thus, per TForce
15 Freight, these allegations lack merit and, in any event, they are not amenable to class or representative
16 treatment since their resolution would require individualized inquiries as to why a break was missed
17 or non-compliant. [Almon Decl., ¶ 52.]

18 On the expense reimbursement claim, Plaintiffs allege that throughout their employment,
19 they and the Class Members were required to use their personal cell phones in order to communicate
20 with supervisors and other employees about work. Plaintiffs and Class Members would not have
26 been able to successfully accomplish their duties without incurring these business expenses.
22 However, Defendants did not reimburse Plaintiffs and the Class Members for this expense. Cochran
23 v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014) ("We hold that when employees
24 must use their personal cell phones for work-related calls, Labor Code section 2802 requires the
25 employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes
26 or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").
27 On the other hand, Defendant argued there would be no conceivable need for employees to use their
28

1 phones for work and that any use of employee phones was purely for personal convenience and
2 therefore not reimbursable. [Almon Decl., ¶ 53.]

3 The claims under Labor Code sections 203 and 226 are subject to the same risks and
4 uncertainties plus additional risks posed by the need to take into account the discretionary nature of
5 such awards and the “good faith” and other defenses available to Defendant. Amaral v. Cintas Corp.
6 No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor
7 Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus,
8 while these claims largely are derivative of the unpaid wage claim, they also are subject to additional
9 defenses. [Almon Decl., ¶ 54.]

10 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
11 entitled to penalties totaling around \$157 million in civil penalties should Plaintiffs prevail on all
12 claims and establish violations of the multiple Labor Code sections at issue for every pay period at
13 issue. [Almon Decl., ¶ 55.] Here, too, Defendants maintained that Plaintiffs’ estimates were
14 dramatically inflated. As with the class claims, Plaintiffs discounted the potential PAGA penalties
15 based on Defendant’s various defenses to the manageability of a trial on the PAGA claims, on the
16 merits and also accounted for the Court’s wide discretion to reduce such penalties, or to decline to
17 award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
18 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which decision was upheld
19 on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS
20 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$165,000 to PAGA
26 penalties, and Plaintiffs submit this amount is reasonable under the circumstances and in line with
22 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
23 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
24 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
25 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
26 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
27 \$345,000 and the possible weaknesses in Plaintiffs’ case, or 2.2 percent of total settlement).
28 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and

1 will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018)
2 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
3 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
4 objected to the settlement.

5 The settlement obviates the significant risk that this Court may find any kind of class or
6 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
7 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation
8 would be lengthy and expensive as the parties pursued merits discovery, a probable motion to
9 decertify, as well as trial and possible appeals, and would further and substantially delay any recovery
10 by the class with no assurance of recovering significantly more than the proposed settlement. While
11 Plaintiff is confident in the merits of these claims, legitimate controversies exist regarding each one
12 of them. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member
13 would be an expensive, time-consuming, and uncertain proposition. [Almon Decl., ¶¶ 42-46, 56-58.]

14 Plaintiffs and their counsel discounted the value of the class claims consistent with the risks
15 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
16 benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very real and
17 substantial risks – settlement on the proposed terms and without prolonged and costly litigation was
18 in the best interests of the class, and the overall \$8,250,000 recovery represents a significant
19 percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of
20 \$8,250,000, which will result in average award of over \$1,600 per Class Member, is a significant
26 result well within the range of reasonableness considering all potential outcomes, and it will provide
22 direct monetary awards to all Participating Class Members and PAGA Members without further
23 delay. [Almon Decl., ¶¶ 42-46, 56-58.]

24 Importantly, the mere fact that a settlement does not provide the same recovery as might be
25 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
26 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
27 process...even if the relief afforded by the proposed settlement is substantially narrower than it would
28 be if the suits were to be successfully litigated, this is no bar to a class settlement because the public

1 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
2 of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question
3 whether a settlement is fundamentally fair . . . is different from the question whether the settlement is
4 perfect in the estimation of the reviewing court”); 7-Eleven Owners for Fair Franchising v. Southland
5 Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a
6 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
7 grossly inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D.
8 Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable
9 even though it represented 99% discount off the maximum value of the claims). Importantly as well,
10 the proposed settlement is non-reversionary and will provide timely benefits to the Class Members
11 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
12 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
13 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
14 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
15 within the “range of reasonableness,” and is fair and adequate for the Class.

16 **V. CONCLUSION**

17 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion,
18 conditionally certify the settlement class, grant preliminary approval to the proposed class action
19 settlement, and enter the [Proposed] Order filed herewith.

20
26 Dated: May 29, 2024

MAKAREM & ASSOCIATES, APLC

22 By: 
23 Samuel Almon
24 Attorneys for Plaintiffs DONYEISHA MISH,
25 DARNELL LEE, LUIS ROBLES, and
XOCHITL VELASCO, and VICTOR
GONZALEZ

26 Dated: May 29, 2024

JAMES HAWKINS APLC

27 By: /s/ James R. Hawkins
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James R. Hawkins, Esq.
Gregory Mauro, Esq.
Michael Calvo, Esq.
Jeanne Sarmiento
Attorneys for Plaintiff ANDREW D. TAPPIN,
individually and on behalf of all others
similarly situated

Dated: 5/29/24

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

By: 
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw
Aparajit Bhowmik
Jeffrey S. Herman
Attorneys for Plaintiff VICTOR GONZALEZ