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on behalf of himself, all others similarly
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO**

RICHARD DUARTE, on behalf of himself,
all others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

PTG LOGISTICS, LLC.; and DOES 1
through 100,

Defendant.

Case No.: CIVSB2126799

[Consolidated with Case No. CIVSB2131398]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 11, 2023

Time: 9:00 a.m.

Dept.: S26

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I. INTRODUCTION

Plaintiff Richard Duarte (“Plaintiff”), on behalf of himself and the approximately 94-member putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement Agreement¹ (“Settlement Agreement”) entered into between Plaintiff and Defendant PTG Logistics, LLC (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against Defendants in this matter in exchange for a non-reversionary \$400,000 Gross Settlement Amount (“GSA”). The proposed class is comprised of hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of Defendant during the Class Period (“Class Members”). The Class Period is the time period beginning on September 10, 2017, through the date the Court enters an order granting Preliminary Approval.

It is requested that the Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this proposed settlement of \$400,000 – **which is estimated to pay class members an average settlement share of approximately \$2,118.79²** – is well within the range of reasonableness. Moreover, the proposed Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

As the following sections show, Class Counsel are convinced that the proposed settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed settlement. The Settlement Agreement was the product of an all-day mediation with

¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as **Exhibit 1**.

² \$199,166.67 NSA / 94 class members = \$2,118.79 average payout per Class Member.

1 well-regarded and experienced mediator Lynn Frank and was the product of non-collusive, arm's-
2 length negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate
3 to all. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Settlement Agreement;
4 (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4)
5 appointment of Mara Law Firm, PC as Class Counsel; (5) approval of the Parties' proposed notice of
6 class action settlement³ (referred to herein as the "Class Notice" or "Notice") and method of notifying
7 the Class about the settlement; and (6) set a hearing date for final approval.

8 **II. FACTUAL/PROCEDURAL BACKGROUND**

9 Defendant provides commercial trucks and truck drivers to deliver freight for its customers in
10 the State of California. In order to carry out its business, Defendant employs hourly truck drivers, like
11 Plaintiff and Class Members. Mara Dec. ¶ 9.

12 On August 26, 2021, Plaintiff sent notice to the LWDA of his intent to pursue various wage
13 and hour claims against Defendant on behalf of similarly situated aggrieved employees. Shortly
14 thereafter, Plaintiff filed a putative class action complaint on September 17, 2021, against Defendant
15 in the San Bernardino County Superior Court, Case No. CIVSB2126799, alleging causes of action for:
16 (1) Failure to Pay All Straight Time Wages; (2) Knowing and Intentional Failure to Comply with
17 Itemized Employee Wage Statement Provisions; (3) Failure to Pay All Wages Due at the Time of
18 Termination of Employment; (4) Irregular Pay Periods; (5) Failure to Adopt a Compliant Sick
19 Pay/Paid Time Off Policy; (6) Failure to Reimburse Business Expenses; and (7) Violation of Unfair
20 Competition Law. Plaintiff also filed a separate action alleging identical violations of the California
21 Labor Code and seeking civil penalties under the PAGA on November 2, 2021, against Defendant in
22 the San Bernardino County Superior Court, Case No. CIVSB2131398. The Parties later agreed to
23 consolidate both cases, with CIVSB2126799 designated as the lead case. Mara Dec. ¶ 10.

24 Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing
25 of any kind associated with the claims alleged in this action, and further deny that, for any purpose
26 other than settling this action, this matter is appropriate for class treatment. Defendant further contends
27 that they have complied with all applicable California laws, the California Labor Code, the applicable
28

³ The Class Notice is attached to the Settlement Agreement as **Exhibit A**.

1 California Wage Order(s), and the Unfair Competition Law. Defendant finally contends that, if this
2 matter were to be litigated further, they would have strong defenses to oppose class certification and
3 succeed on the merits of Plaintiffs' causes of action. Mara Dec. ¶ 11.

4 **III. LITIGATION HISTORY/PARTIES CONTENTIONS**

5 **a. Discovery and Investigation**

6 Through discovery, Plaintiffs sought numerous documents and substantial amounts of data that
7 were needed to evaluate the case. These documents included requests for time and wage records for
8 the Class, employee handbooks, policies, and practices in place during the class period, as well as data
9 surrounding the number of current and former employees. Mara Dec. ¶ 12.

10 This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
11 production of hundreds of documents and thousands of lines of data, including Defendant's employee
12 handbooks, policies, and practices, and a sampling of wage and time records for Plaintiff and Class
13 Members. Using the time and wage records for the Class provided and the data surrounding the number
14 of current and former employees, Plaintiff and his expert were able to establish a potential exposure
15 model in preparation for mediation. Mara Dec. ¶ 13.

16 **b. The Parties' Staunchly Conflicting Positions**

17 **i. Unpaid Wages**

18 Based upon the discovery conducted, Plaintiff contends – and Defendant denies – that
19 Defendant failed to pay all wages owed to Class Members. Employees must be paid for all “hours
20 worked,” as that phrase is defined in the Wage Orders and interpreted by California courts. Hours
21 worked is defined as “the time during which an employee is subject to the control of an employer, and
22 includes all the time the employee is suffered or permitted to work, whether or not required to do so.”
23 Wage Order 1-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833
24 (2015).

25 Under this standard, “it is only necessary that the worker be subject to the control of the
26 employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575,
27 584 (2000). The *Morillion* Court reasoned that an employee is under the employer's control and
28 entitled to compensation when the employer “‘directs, commands or restrains’ an employee.”

1 *Morillion*, 22 Cal. 4th at 583 (quoting *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975
2 (1995)). The California Supreme Court further found that “[a]n employer that requires its employees
3 to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the
4 obligation to compensate the employee for that time by invoking the de minimis doctrine.” *Troester*
5 *v. Starbucks Corp.*, 5 Cal. 5th 829, 847 (2018). Off-the-clock claims are governed by a known or
6 should have known standard. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
7 1051 (“liability is contingent on proof [the employer] knew or should have known off-the-clock work
8 was occurring”) (citing *Morillion*, 22 Cal. 4th at 585).

9 Here, Plaintiffs contend that Class Members were required to perform several work related tasks
10 prior to clocking in for the day and after clocking out at the end of the day without compensation from
11 Defendant. Prior to clocking in, Class Members must unlock the chains on the gate to permit them to
12 enter Defendant’s truck yard, open the gate, go inside the yard, and then lock the gate back up behind
13 them. Next, Class Members are instructed to go to their assigned “box” to get their paperwork for the
14 day, take their paperwork with them to their truck, open the truck, and clock in for the day on the
15 tablets given to them by Defendant that are stored in the truck. After clocking out for the day, Class
16 Members must then deliver paperwork back to their assigned box, unlock the gate so they can leave
17 the yard, and lock the gate again after exiting. Mara Dec. ¶ 14.

18 Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that Class
19 Members performed *any* work-related tasks for which they were not compensated, and that Defendant
20 has uniform practices and policies *forbidding* employees from working off the clock. Defendant claims
21 that Plaintiff’s “investigation” is wholly inaccurate, and that the time spent engaging in the above tasks
22 is grossly inflated by Plaintiff. Defendant argues that Class Members are instructed to clock in before
23 performing any work related tasks, and that they are trained on how to accurately log their time so that
24 they can be paid for all time worked. Mara Dec. ¶ 15.

25 **ii. Overtime**

26 Pursuant to Labor Code section 510, “[a]ny work in excess of eight hours in one workday and
27 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh
28 day of work in any one workweek shall be compensated at the rate of no less than one and one-half

1 times the regular rate of pay for an employee.” Under Wage Order 9-2001, Subd. 3(L), however,
2 because it is undisputed that Class Members are subject to the Hours of Service requirements of the
3 United States Department of Transportation Code of Federal Regulations, they are properly exempt
4 from receiving overtime under the Labor Code and Wage Orders.

5 Despite this, Plaintiff contends that Defendant has established an implied contract with Class
6 Members to pay them overtime. Civil Code section 1621 defines
7 an implied contract: “An implied contract is one, the existence and terms of which are manifested by
8 conduct.” “An implied contract ... in no less degree than an express contract, must be founded upon
9 an ascertained agreement of the parties to perform it, the substantial difference between the two being
10 the mere mode of proof by which they are to be respectively established.” *Gorlach v. Sports Club*
11 *Co.* (2012) 209 Cal.App.4th 1497, 1507 Although an implied in fact contract may be inferred from the
12 “conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is
13 an *intent* to promise.” *Id.* at 1507-1508 (citing *Friedman v. Friedman* (1993) 20 Cal.App.4th 876, 887,
14 italics added).

15 Plaintiff argues that Defendant tells Class Members that they will receive overtime pay anyway
16 when they work over 8 hours in a day or 40 hours in a week, essentially creating an implied contract:
17 “You work for us, we will pay you more then we have to by law.” Based on the record sampling
18 produced, Plaintiff points out that Defendant does, in fact, regularly pay Class Members overtime
19 when they work over 40 hours in a week, and creates clear evidence of an implied contract, or
20 “promise,” to pay the Class Members overtime. Thus, for all the instances where a Class Member did
21 work over 8 hours in a day or 40 hours in a week and was not paid overtime, Defendant would be
22 liable for this amount. Mara Dec. ¶ 16.

23 Defendant disputes the entirety of Plaintiff’s argument and the denies that it is liable for any
24 overtime at all. First, Defendant argues that there is no contract with Class Members to pay them
25 overtime at all, and that Plaintiff cannot point to any written agreement or policy that conveys any
26 such message, nor is there any evidence that this purported “promise” was ever conveyed by Defendant
27 to Class Members. Second, simply because Defendant decides in certain limited circumstances to pay
28 Class Members overtime on occasion does not result in the formation of any kind of implied contract.

1 Defendant is not legally obligated to pay Class Members overtime, and it is completely up to
2 Defendant if it decides to do so on occasion. As such, Defendant claims that Class Members are being
3 paid *more* than they are legally entitled to, not less. Mara Dec. ¶ 17.

4 **iii. Reimbursement**

5 Plaintiffs further contend that Defendant fails to reimburse Class Members for business
6 expenses. Under Labor Code § 2802, Plaintiff argues that Defendant is required to reimburse Plaintiff
7 and Class Members for a portion of their personal cell phone bills and the costs of laundering their
8 uniforms. Labor Code § 2802(a) reads:

9 An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by
10 the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
11 the directions of the employer, even though unlawful, unless the employee, at the time of obeying the
12 directions, believed them to be unlawful.

13 Plaintiff contends that the primary method of communication Defendant uses to contact Plaintiff and
14 Class Members throughout the day is their personal cell phones, and that Defendant is liable for a
15 reasonable percentage of their cell phone bills under § 2802. Plaintiff further contends that because
16 Defendant requires Plaintiff and Class Members to launder and care for Defendant's uniforms,
17 Defendant is also liable for a reasonable percentage of those costs as well. Mara Dec. ¶18.

18 Defendant contends that it never has required Plaintiff or other Class Members to use their
19 personal cell phone for business purposes. Defendant claims that it provides Class Members with
20 company issued tablets that it expects Class Members to use to communicate with Defendant as needed
21 throughout the workday. Defendant further contends that it expects Class Members to use the company
22 provided phones when communicating with their supervisors and that any use of a Class Members'
23 personal cell phone for these communications was solely that Class Members' choice, and that
24 Defendant never mandated or required the use of personal cell phones for business purposes.
25 Defendant also contends that their uniforms do not require any special care or maintenance, and can
26 simply be washed as part of the Class Members' regular laundry, which absolves Defendant from any
27 responsibility for any related expenses. Mara Dec. ¶ 19.

28 As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiff's
claims.

1 **c. The Parties Agreed to Attend Mediation**

2 The Parties agreed to attend mediation with mediator Lynn Frank, Esq. on April 18, 2023.
3 After a full day of mediation, the Parties were able to reach a classwide settlement. Since then, the
4 Parties have met and conferred regarding all the terms of the settlement and finalized their agreement
5 in the Parties' Settlement Agreement. The Parties seek preliminary approval of the Settlement
6 Agreement in the instant motion. Mara Dec. ¶ 20; **Exhibit 1**.

7 **d. The Terms of the Proposed Settlement**

8 Under the terms of the proposed settlement, Defendant will create a settlement fund of
9 \$400,000.

10 **i. Deductions From the Settlement**

11 The Parties have agreed (subject to and contingent upon the Court's approval) that this action
12 be settled and compromised for the non-reversionary total sum of \$400,000, which includes, subject
13 to Court approval: (a) attorneys' fees of up to \$133,333.33 (one-third of the GSA) to compensate Class
14 Counsel for work already performed and all work remaining to be performed in documenting the
15 settlement, administrating the settlement, and securing Court approval; (b) litigation expenses
16 estimated not to exceed, \$25,000;⁴ (c) an enhancement payment to the named class representative,
17 Richard Duarte, in a sum not to exceed \$10,000 in consideration for agreeing to a general release of
18 his claims against Defendant which is broader than that of other class members, and in recognition of
19 their efforts in prosecuting their actions; (d) claims administration fees and expenses to Apex Class
20 Action LLC (hereinafter "Apex"), estimated not to exceed approximately \$7,500;⁵ and (e) PAGA
21 payment of \$25,000 allocated to Plaintiff's PAGA claims.

22 **ii. Calculation of the Settlement Payments to Participating Class Members**

23 After all Court-approved deductions from the GSA, it is estimated that \$199,166.67 ("Net
24

25 _____
26 ⁴ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the
27 amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed
28 \$25,000, Plaintiffs will only seek reimbursement of costs up to \$25,000.

29 ⁵ Apex will present to the Court a declaration in conjunction with the final approval motion outlining
30 the costs of the settlement administration process. If the settlement administration costs are lower than
31 the amount allocated in the Settlement Agreement, the difference will be added to the Net Settlement
32 Amount for distribution to Participating Class Members.

Settlement Amount” or “NSA”), less all applicable employee payroll taxes⁶, will be distributed to each Participating Class Member.⁷ Subject to the terms and conditions of the settlement, the Settlement Administrator will calculate and issue Individual Class Settlement Shares based on the following formula:

Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or she worked. **Exhibit 1** attached to the Mara Dec. at Section III (56)(a)(i).

Furthermore, the Settlement allocates \$25,000 in consideration for the settlement of Plaintiff’s PAGA claims, which is to be distributed separately from the NSA. Settlement Class Members who performed work for Defendant from August 26, 2020 to the date of Preliminary Approval (“PAGA Period”) are also deemed “Aggrieved Employees” and able to recover their share of the civil penalties under the settlement. 75% of this \$25,000, or \$18,750, will be paid to the LWDA, while the remaining 25%, or \$6,250, will be distributed to the Aggrieved Employees. The Settlement Administrator will calculate and issue Individual PAGA Settlement Shares based on workweeks, just as with the class payments, but only for the PAGA Period of August 26, 2020 to the date of Preliminary Approval. **Exhibit 1** attached to the Mara Dec. at Section III (57)(a)(i).

The precise number of compensable weeks worked per class member will not be known until the administrator tabulates them, following preliminary approval. Under no circumstances will any portion of the \$400,000 settlement revert to Defendant and one hundred percent (100%) of the NSA is available for Class Members to claim.

The Individual Class Settlement Shares will be divided into a “wage portion” to compensate Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate

⁶ The employer’s share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages shall be paid by Defendant separately and in addition to the GSA. **Exhibit 1** attached to the Mara Dec. at Section I (19).

⁷ Participating Class Members are Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. **Exhibit 1** attached to the Mara Dec. at Section I (34).

1 Participating Class Members for alleged interest and penalties. Participating Class Members’
2 individual settlement shares will be apportioned as follows: twenty percent (20%) wages and eighty
3 (80%) interest and penalties. The Individual PAGA Settlement Shares will be apportioned as one-
4 hundred percent (100%) penalties.

5 **iii. Notice to the Class**

6 Upon entry of the order of the Court granting preliminary approval of this Agreement,
7 Defendant shall provide the Settlement Administrator with a list in Excel spreadsheet format
8 containing the name and last known address, telephone number, and social security number of each
9 Class Member within ten (10) business days for purposes of mailing the Notice of Class Action
10 Settlement to the Settlement Class members. Upon receipt of the class data, the Settlement
11 Administrator will perform a search based on the National Change of Address Database to update and
12 correct any known or identifiable address changes. Within ten (10) business days of receipt of the
13 class data, the Settlement Administrator shall mail copies of the Notice of Class Action Settlement to
14 all Class Members via regular First-Class U.S. Mail. Class Members shall have forty-five (45) days
15 after the Class Notices are mailed to respond by submitting a challenge to the number of workweeks
16 attributed to them, submitting an objection, or requesting to be excluded from the Settlement
17 Agreement.

18 **iv. Distribution of Funds**

19 No later than ten (10) business days after the Effective Final Settlement Date⁸, Defendant shall
20 provide the GSA to the Settlement Administrator to fund the Settlement and the employer’s share of
21 payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Not
22 later than ten (10) business days after receiving the funds from Defendant, the Settlement
23 Administrator shall disburse: (1) the Individual Settlement Shares to each Class Member and
24 Aggrieved Employee; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys’
25 fees and costs, as approved by the Court; (3) the Enhance Payment paid to the Class Representative,
26

27 ⁸ “Effective Final Settlement Date” of the Settlement means when the final approval of the settlement
28 can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the
court grants final approval of the settlement, the date the court enters judgment granting final approval
of the settlement.

as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court.

Class Members must cash or deposit their Individual Settlement Payment checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement Administrator will transmit the funds to The Youth Assistance Coalition in compliance with section 384 of the California Code of Civil Procedure.

v. Release of Claims

As of the Effective Final Settlement Date, the Class Representative and the Class Members will release the Released Class Claims:

Any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that are alleged or could have been alleged based upon a reasonable interpretation of the facts alleged in the Complaints against Defendant, including, but not limited to, 1) Failure to Pay All Straight Time Wages; 2) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 226); 3) Failure to Pay all Wages Due at the Time of Termination (Cal. Lab. Code § 203); 4) Failure to Adopt a Compliant Sick Pay Policy (Cal. Lab. Code § 246); 5) Irregular Pay Periods (Cal. Lab. Code § 204); 6) Failure to Reimburse Business Expenses (Cal. Lab. Code § 2802); 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and 8) Failure to Pay all Overtime (Cal. Lab. Code § 510). **Exhibit 1** attached to the Mara Dec. at Section I (37).

As of the Effective Final Settlement Date, the Class Representative and the Aggrieved Employees will release the Released PAGA Claims:

Any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act predicated upon the Labor Code violations asserted, as well as any potential penalties, interest or attorneys' fees associated with those violations under California law, to the extent such claims are predicated on claims made or that could have been made based on the facts and circumstances alleged in the Complaints and Plaintiff's notice to the LWDA, including, but not limited to, 1) Failure to Pay All Straight Time Wages; 2) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 226); 3) Failure to Pay all Wages Due at the Time of Termination (Cal. Lab. Code § 203); 4) Failure to Adopt a Compliant Sick Pay Policy (Cal. Lab. Code § 246); 5) Irregular Pay Periods (Cal. Lab. Code § 204); 6) Failure to Reimburse Business Expenses (Cal. Lab. Code § 2802); 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); and 8) Failure to Pay all Overtime (Cal. Lab. Code § 510). **Exhibit 1** attached to the Mara Dec. at Section I (38).

1 In addition, Plaintiff agreed to a general release of his claims against Defendant. *See Exhibit*
2 **1** attached to the Mara Dec. at Section III (63). At final approval, Class Counsel will seek approval of
3 this Enhancement Payment to the named Plaintiff in the sum of \$10,000. As will be detailed at final
4 approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is
5 giving to Defendant in exchange for the \$10,000 payment.

6 In addition, this payment is further supported by the fact that plaintiffs are often subjected to
7 the stigma associated with bringing these types of lawsuits. In this age of technology, employers
8 engage in thorough background checks on their employees. As these case filings are all public record,
9 a simple “Google” search is all it would take for Plaintiff’s name to appear associated with these
10 pending lawsuits against their former employers. This could be a significant factor in any employer’s
11 decision to hire Plaintiff in the future.

12 Plaintiff took it upon himself to delay recovery of his individual wage and hour claims by
13 proceeding with class and representative actions, with a full understanding of the risks involved.
14 Plaintiff was fully aware that class action and representative litigation would cause Defendant to incur
15 hefty costs throughout the litigation, and that if he was unsuccessful in these cases, may be liable for
16 some, or even all, of these costs. Despite this knowledge, Plaintiff pushed forward with the litigation;
17 he was always readily available by phone and fully participated every step of the way throughout the
18 entirety of this process.

19 Courts routinely approve service payments, or incentive awards, to compensate named
20 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
21 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*
22 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
23 Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the
24 \$10,000 payment to the named Class Representative is fair, appropriate and justified as part of the
25 overall settlement.

26 \\\

27 \\\

28 \\\

1 **IV. ARGUMENT**

2 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
3 **California Rules of Court**

4 Rule 3.769 requires court approval for class action settlements.⁹ “Before final approval, the
5 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
6 Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class
7 settlements:

8 (a) A settlement or compromise of an entire class action, or a cause of action in a
9 class action, or as to a party, requires the approval of the court after hearing.

10 (c) Any party to a settlement agreement may serve and file a written notice of
11 motion for preliminary approval of the settlement. The settlement agreement
12 and proposed notice to class members must be filed with the motion, and the
13 proposed order must be lodged with the motion.

14 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
15 account “all the normal perils of litigation as well as the additional uncertainties inherent in complex
16 class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den.
17 sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

18 **b. The Settlement is Fair, Reasonable, and Adequate**

19 In deciding whether to approve a proposed class action settlement under Code of Civil
20 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
21 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
22 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length
23 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with
26 the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation
27 – bearing on the fairness of the proposed settlement are present here and the Court’s grant of

28 ⁹ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23
and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the
Parties cite Federal Rule 23 and federal case law in addition to California law.

preliminary approval is therefore requested.

i. The Settlement was Reached as a Result of Arm’s Length Negotiations

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration of David Mara, Esq. as **Exhibit 1**.

ii. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The settlement was only possible following discovery and evaluation of Defendant’s policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

iii. Counsel for Both Parties are Experienced in Similar Litigation

Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating unpaid wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement class actions. Plaintiff’s Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided

1 their determination to endorse the proposed settlement. Defendant’s Counsel has extensive experience
2 representing companies and regularly deals with wage and hour litigation matters. Accordingly, both
3 Parties’ Counsel are experienced in wage and hour employment law and class actions.¹⁰

4 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

5 An understanding of the amount in controversy is an important factor into whether the
6 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the
7 claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168
8 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
9 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs
10 on the merits, balanced against the amount offered in settlement.” *Id.*

11 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide
12 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
13 attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
14 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
15 provided there is a record which allows “an understanding of the amount that is in controversy and the
16 realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently, “as the
17 court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the
18 court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.”
19 *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38
20 Cal.3d 488, 499-500. As the following subsections show, the Parties’ investigation and discovery
21 revealed plenty of reasons to discount claims and agree to this settlement.

22 **1. The Settlement is Fair and Reasonable Based on the Strengths of**
23 **Plaintiffs’ Case and the Risks and Costs of Further Litigation**

24 The proposed settlement was only possible following significant discovery, an evaluation of
25 Defendant’s relevant policies and procedures, and Plaintiff’s independent investigation. This
26 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The
27 discovery conducted resulted in Plaintiff’s central theories of liability, which are predicated on

28 ¹⁰ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class
Notice has been provided to the class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the final approval motion.

1 Plaintiff's claims that Defendant failed to pay hourly driver employees for all time worked, failed to
2 pay them contractually promised overtime, and failed to reimburse them for business expenses. As
3 explained above, Defendant maintains that the discovery produced demonstrates that it would succeed
4 at both class certification and on the merits.

5 Although, Plaintiff believes this case is suitable for certification on the claimed bases that there
6 are company-wide policies and practices that Plaintiff contends violate California law and uniformly
7 affect the class members, Defendant's counter-arguments and affirmative defenses raise uncertainties
8 with respect to both class certification and success on the merits. As the California Supreme Court
9 ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the
10 trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with
11 respect to certification of wage and hour claims.¹¹ While remaining confident in the strengths of their
12 claims, all of these factors led Plaintiff to discount the following maximum potential damage claims.

13 **2. Exposure and the Risks for Each Claim**

14 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's
15 claims, Defendant provided Plaintiff with information and data points which Plaintiffs submitted to
16 an expert to establish a representative damage model, as explained below. Mara Dec. ¶ 21.

17 **A. Unpaid Wages / Overtime**

18 Plaintiff contends that Defendant has failed to pay Class Members for all hours worked.
19 Defendant required Class Members to perform work related tasks before they were able to clock in for
20 the day and after they had clocked out at the end of their shifts. Plaintiff alleges that Class Members
21 spent about thirty (30) minutes of time each shift on all of these tasks. All of these tasks were done
22 off-the-clock and were uncompensated. Plaintiff further contends that this unpaid time is required to
23 be compensated at the overtime rate pursuant to Plaintiff's claim that Defendant has established an
24 implied contract with Class Members to pay them overtime. Mara Dec. ¶ 22.

25 ¹¹ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class
26 claiming misclassification and ordering summary adjudication in favor of employees), *review granted*,
27 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON*
28 *Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming
misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of
certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of
certification).

1 Accordingly, Defendant's *maximum* exposure under Plaintiffs' unpaid wages claim is
2 **\$703,213** (Approximately 40,766 total shifts during the Class Period x 30 minutes of unpaid time for
3 pre-shift and post-shift duties x \$34.50 average overtime rate = \$703,213). Mara Dec. ¶ 23.

4 Further, if Plaintiff were to prevail on their unpaid wages claim, he may also be entitled to
5 waiting time penalties. Plaintiff calculates the potential *maximum* exposure under the waiting time
6 penalties cause of action as **\$314,640** (57 former employee Class Members during the three-year
7 statutory period x 30 days x 8 hours x \$23.00 average hourly rate = \$314,640). Mara Dec. ¶ 24.

8 Additionally, if Plaintiff were to prevail on his unpaid wages claim, he may also be entitled to
9 wage statement penalties. Plaintiffs calculate the potential *maximum* exposure under the wage
10 statement cause of action as **\$116,000** (\$4,000 maximum penalty x 29 current employee Class
11 Members = \$116,000). Mara Dec. ¶ 25.

12 Plaintiff had to discount the maximum exposure of these claims to account for the viability of
13 Defendant's counter arguments. As discussed above, Defendant argues that beyond the limited
14 accusations of Plaintiff, there is no evidence that Class Members performed *any* work-related tasks
15 for which they were not compensated, and that Defendant has uniform practices and policies
16 *forbidding* employees from working off the clock. Defendant claims that Plaintiff's "investigation" is
17 wholly inaccurate, and that Class Members are able and do clock in for their shifts prior to engaging
18 in any of the work related activities Plaintiff alleges are purportedly unpaid. Defendant also contends
19 that individualized issues would predominate because the Court would have to ask each and every
20 class member how long they spent on safety training each month and whether they accurately logged
21 the time it took to complete the training. As Plaintiff's claims for waiting time and wage statement
22 penalties are derivative of his wage claims, Defendant argues that it would not be liable for these
23 either. Should the Court agree with Defendant's arguments, Plaintiff's and class members would be
24 entitled to no recovery under these causes of action. Mara Dec. ¶ 26.

25 **B. Reimbursement**

26 Further, Plaintiff claims that Defendant has required Plaintiff and Class Members to incur
27 business expenses during their employment without receiving any reimbursement from Defendant.
28 Specifically, Plaintiff contends that Class Members are required to use their personal cell phones to

1 communicate with Defendant during the workday, and that they are required to launder and care for
2 the uniforms provided by Defendant. If Plaintiff were to prevail on his reimbursement cause of action,
3 Class Members would be entitled to reimbursement for a reasonable percentage of their costs
4 associated with their personal cell phones and laundry. Therefore, the *maximum potential exposure*
5 under this theory of liability would be **\$116,580** [(67 months during the relevant time period at the
6 time of mediation x \$30, or 30% of a \$100 monthly phone bill, x 29 Class Members employed at any
7 given time = \$58,290 for cell phone usage) + (67 months during the relevant time period at the time
8 of mediation x \$30, or 30% of \$100 monthly laundry costs, x 29 Class Members employed at any
9 given time = \$58,290 for laundering uniforms) = \$116,580]. Mara Dec. ¶ 27.

10 Plaintiff's reimbursement claim is also subject to risks of obtaining certification and on the
11 merits. Defendant asserts that its policies and practices mandate that Class Members communicate
12 with Defendant throughout the workday via their tablets, not their personal cell phones. Defendant
13 also argues that because the uniforms provided to Class Members do not require any special care, they
14 can be washed with their regular laundry, and therefore cannot form a basis for a reimbursement claim.
15 Further, Defendant points out that because each Class Member would have to testify as to the extent
16 of their use of their personal cell phone and uniform laundering and their understanding of company
17 policy surrounding these issues, class certification would be denied for lack of predominance. Mara
18 Dec. ¶ 28.

19 C. PAGA

20 Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
21 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
22 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

23 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
24 period for the initial violation and two hundred dollars (\$200) for each aggrieved
25 employee per pay period for each subsequent violation.

26 Plaintiff alleges that Defendant has four (4) core violations –failure to pay all time worked, failure to
27 reimburse business expenses, failure to provide accurate, itemized wage statements, and failure to pay
28 all wages twice per month – of the Labor Code sections which give rise to PAGA penalties. The statute
of limitations for PAGA violations goes back one year. As there were 3,714 pay periods in the statutory

1 period at the time of mediation, Plaintiff calculated Defendant’s potential maximum exposure under
2 PAGA as follows:

$$3 \qquad \qquad \qquad \$100 \times 4 \text{ PAGA violations} \times 3,714 \text{ pay periods} = \mathbf{\$1,485,600}$$

4 Mara Dec. ¶ 29.

5 Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s non-PAGA
6 claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that “[i]n any action by an
7 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
8 may award a lesser amount than the maximum penalty amount specified by this part if, based on the
9 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
10 arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*
11 (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
12 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
13 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112,
14 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its
15 obligations to comply with the law seriously. *Id.* Defendant maintains that if the case were to continue
16 in litigation, they would be able to show that they took their obligations to comply with the law
17 seriously. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, it is likely
18 that the Court would reduce the maximum penalty allowed.

19 In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful
20 conduct that Plaintiff bases his other claims, Plaintiff’s PAGA claims are subject to the same risks on
21 the merits as Plaintiff’s class claims. If Plaintiff is ultimately unable to prevail on any one of his class
22 claims, his recovery under the PAGA as to that violation would also fail. The likelihood of the Court
23 reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability
24 is proven as to each of Plaintiff’s claims – is also higher in this case where these same individuals will
25 also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold*
26 *Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist.
27 LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
28 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§

203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
penalties are highly uncertain.”).

3. The Settlement Amount of \$400,000 is Reasonable

Not taking into account any of their defenses or arguments, Defendant’s total exposure if
Plaintiff was successful in his core claims would be approximately \$819,793 [\$703,213 (unpaid wages
exposure) + \$116,580 (reimbursement exposure) = \$819,793]. If Plaintiff’s are successful in their
unpaid wage claims, they may also be entitled to damages for waiting time and wage statement
penalties in the amount of \$314,640 and \$116,000, respectively. If all of Plaintiff’s claims are
successful, they may also be entitled to PAGA penalties in the maximum amount of \$1,485,600. Mara
Dec. ¶ 30.

Based upon the risks just discussed, Plaintiff had to discount the maximum potential exposure.
Plaintiff also had to consider that, should the Court agree with his theories and grant certification as
to each of the claims, he may not be awarded the full exposure at trial. Plaintiff also had to consider
that the Court could agree with Defendant’s arguments. If his unpaid wage claims failed, the claims
for waiting time and wage statement penalties would also fail. The claims for PAGA penalties would
similarly be reduced. All of these factors led Plaintiff to reduce the realistic potential exposure in order
to gain a definite monetary recovery for the class.

In light of the risks Plaintiff’s claims faced, Plaintiff and their Counsel believe that the
settlement amount of \$400,000 – **with an average settlement share amount estimated at \$2,118.79**
– is a reasonable and fair settlement amount. Mara Dec. ¶ 31.

A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
Fargo Bank (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the
settlement process...even if the relief afforded by the proposed settlement is substantially narrower
than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
the public interest may indeed be served by a voluntary settlement in which each side gives ground in
the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n*

(9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not...render the settlement inadequate or unfair”).

c. Provisional Class Certification Should be Granted

Under California law, a class action is appropriate when the class is ascertainable and there is “a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil Procedure § 382 for class certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must certify a class for settlement purposes if a class has not already been certified, “it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes only: All hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of Defendant from September 17, 2017 through the date the Court enters an order granting Preliminary Approval.

i. The Proposed Settlement Class is Ascertainable

Plaintiff contends that the proposed Settlement Class is ascertainable because of all of the class members have worked for Defendant and have been identified through Defendant’s own records, such as employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926,932 (finding that “Class Members are ‘ascertainable’ where they may be readily identified without unreasonable

1 expense or time by reference to official records.”); *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th
2 905, 919 (“[c]lass members are ‘ascertainable’ where they may be readily identified without
3 unreasonable expense or time by reference to official [or business] records.”). Thus, the
4 ascertainability requirement is met.

5 **ii. The Proposed Settlement Class is Sufficiently Numerous**

6 The numerosity requirement is met if the class is so large that joinder of all members would be
7 impracticable. *Gay v. Waiters’ & Dairy Lunchmen’s Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff’d*
8 (9th Cir. 1982) 694 F.2d 531. “There is no set number required to maintain a class action, and the
9 statutory test is whether a class is so numerous that ‘it is impracticable to bring them all before the
10 court.’” *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223
11 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995)
12 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is more readily met
13 when a class contains employees suing their present employer . . . This is because class members may
14 be unwilling to sue their employer individually out of fear of retaliation.” *Romero v. Producers Dairy*
15 *Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, “fear of
16 retaliation for individual suits against an employer is a justification for class certification in the arena
17 of employment litigation, even when it is otherwise questionable that the numerosity requirements
18 were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate
19 to induce aggrieved employees quietly to accept substandard conditions.” *Gentry v. Superior Court*
20 (2007) 42 Cal.4th 443, 460 (citation omitted), overruled on other grounds in *Iskanian v. CLS Transp.*
21 *Los Angeles, LLC* (2014) 59 Cal.4th 348.

22 Here, Defendant’s records show that the proposed Settlement Class has approximately ninety-
23 four (94) members. Plaintiff contends that joinder of all Class Members is impracticable and, therefore,
24 a class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030
25 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as
26 28 is acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing *Bowles v.*
27 *Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that classes of over
28 forty (40) individuals are numerous enough to meet the numerosity requirement. *See Ikonen v. Hartz*

1 *Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class that is comprised of
2 approximately ninety-four (94) members is sufficient to satisfy the numerosity requirement.

3 **iii. The Commonality Requirement is Met**

4 The commonality requirement is met if there are questions of law and fact common to the class.
5 *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
6 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
7 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members to
8 individually establish eligibility and damages does not mean individual fact questions predominate.’”
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there
10 is a predominant common legal question regarding how an employer’s policies impact its employees.
11 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) (“[T]he common legal
12 question remains the overall impact of Diva’s policies on its drives.”). Whether Plaintiff is likely to
13 prevail on his theory of recovery is irrelevant at the certification stage since the question is “essentially
14 a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v.*
15 *Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

16 Here, Plaintiff contends that the proposed Class Members’ claims all stem from the same
17 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff
18 seeks the same legal remedies under state law on behalf of themselves and all Class Members. As
19 liability as to all Class Members is predicated on the same policies and practices, which Plaintiff
20 alleges violates California law, the commonality requirement has been satisfied.

21 **iv. The Typicality Requirement is Met**

22 The typicality requirement is met if the claims of the named representative are typical of those
23 of the class, though, “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020;
24 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiffs contend that their claims are typical of
25 the Class Members’ claims because they arise from the same factual basis and are based on the same
26 legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987)
27 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff
28 alleges that Defendant’s policies applied to all Class Members. Factual differences may exist between

1 Plaintiff's and the Class Members so long as the claims arise from the same events or course of conduct
2 and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*,
3 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same
4 unlawful conduct was directed at or affected both the named plaintiff and the class sought to be
5 represented, the typicality requirement is usually met irrespective of varying fact patterns which
6 underlie individual claims.] As such, the typicality requirement is satisfied.

7 **v. The Adequacy Requirement is Met**

8 The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
9 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the class.
10 *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51.
11 Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of interest with
12 the Class. He has been and continues to be committed to vigorously prosecuting this case. If any Class
13 Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of
14 interest between Plaintiff and the Class Members.

15 **vi. Notice to Class Members Complies with California Rule of Court 3.769(f)**

16 California Rule of Court 3.769(f), provides:

17 If the court has certified the action as a class action, notice of the final approval hearing
18 must be given to class members in the manner specified by the court. The notice must
19 contain an explanation of the proposed settlement and procedures for class members to
20 follow in filing written objections to it and in arranging to appear at the settlement
hearing and state any objections to the proposed settlement.

21 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises
22 the class of their rights to participate in the settlement, how to and when to object to or request
23 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
24 proposed Class Notice is attached as **Exhibit A** to the Settlement Agreement.

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1 **V. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement is in the best interests of the class
3 and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
4 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
5 should be preliminarily approved by the Court, the class should be conditionally certified for purposes
6 of settlement only, and the Notice of Class Action Settlement should be approved.

7
8 Respectfully Submitted,

9 **MARA LAW FIRM, PC**

10
11 Date: June 15, 2023

Signed: 
David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff