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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FRANCISCO HERNANDEZ, LUCIANO ESQUEDA, EFRAIN IBARRA, CARLOS LOPEZ, RAMON ALCALA NAVARRO, as individuals and on behalf of all others similarly situated,

Plaintiffs,

vs.

GOLD POINT TRANSPORTATION, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV35686

[*Assigned for All Purposes to Hon. William F. Highberger, Dept. SSC-10*]

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

Date: February 10, 2027
Time: 11:00 a.m.
Dept.: SSC-10

Complaint Filed: September 28, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, February 10, 2027 at 11:00 a.m. in Department SSC-10 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Francisco Hernandez, Carlos Lopez, Ramon Alcala Navarro and Luciano Esqueda (collectively, "Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed class settlement and settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, and solely for the purposes of settlement, conditional certification of the following Settlement Class defined as follows:

   > All persons contracted by GOLD POINT in California and classified as an independent contractor driver who operated a truck for GOLD POINT during the Class Period.
   >
   > The Class Period means the period from September 28, 2017 to December 31, 2022.

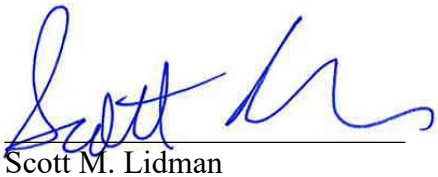
3. Preliminary appointment of Plaintiffs Francisco Hernandez, Carlos Lopez, Ramon Alcala Navarro and Luciano Esqueda as Class Representatives for purposes of settlement only;
4. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel for purposes of settlement only;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to approve an enhancement award to Plaintiffs, costs incurred by the Settlement Administrator, civil penalties payable to the California Labor Workforce Development Agency and Aggrieved Employees, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, which is attached to the Settlement as Exhibit A and an order

that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiffs Francisco Hernandez, Carlos Lopez, Ramon Alcala Navarro and Luciano Esqueda, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: October 8, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: 
Scott M. Lidman

Attorneys for Plaintiffs
FRANCISCO HERNANDEZ, LUCIANO ESQUEDA, CARLOS LOPEZ, and RAMON ALCALA NAVARRO

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MEMORANDUM OF POINTS AND AUTHORITIES[1]

I. INTRODUCTION

Plaintiffs Francisco Hernandez, Carlos Lopez, Ramon Alcala Navarro and Luciano Esqueda brought this class and representative action against Defendant Gold Point Transportation, Inc. ("Defendant") alleging various wage and hour and related violations based on the allegations that Defendant misclassified them as independent contractor drivers. Plaintiffs' primary allegations are that Defendant: (1) failed to pay all minimum wages owed; (2) failed to provide accurate, itemized wage statements; (3) failed to reimburse necessary business expenses; (4) made unlawful deductions from wages; (5) failed to pay all wages owed upon termination; (6) engaged in unfair competition; and (7) is liable for civil penalties under the California Private Attorneys General Act of 2004 ("PAGA").

Plaintiffs and Defendants (together, the "Parties") came to a resolution and fully executed a class-wide and PAGA settlement agreement. Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary, class action settlement[2] in which Defendant has agreed to pay a total settlement amount of Two Million Dollars and Zero Cents ($2,000,000.00) on behalf of the following Settlement Class:

> All persons contracted by GOLD POINT in California and classified as an independent contractor driver who operated a truck for GOLD POINT during the Class Period.
>
> The Class Period means the period from September 28, 2017 to December 31, 2022.[3]

Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement because all Settlement Class Members will automatically receive a payment unless they affirmatively opt-out.

Thus, after deducting administration costs, Plaintiffs' service awards, attorneys' fees and costs, and payment of PAGA Penalties to the California Labor and Workforce Development Agency

[1] Given the multiplicity of issues addressed in this Motion, Plaintiffs respectfully request that the Court allow Plaintiffs to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider the attached memorandum of points and authorities which is 23 pages in length.

[2] The Class Action and PAGA Settlement Agreement and Class Notice ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 2. All defined terms in this motion have the same definitions as used in the Settlement.

[3] The class period ends on December 31, 2022 because that is the last date that Defendant utilized drivers as independent contractors.

("LWDA") and Aggrieved Employees, the remaining Net Settlement Amount ("NSA") of approximately $1,117,050.00 will be paid to all Settlement Class Members who do not timely opt out – rendering the average payment to participating Settlement Class members to be approximately **$5,449.02** as a direct result of this litigation. This proposed Settlement is well within the range of possible approval in light of the significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

During the class period, Defendant did business as a drayage carrier, transporting goods in the shipping and logistics industry. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. As of January 1, 2023, Defendant no longer provides any trucking delivery services in California and no longer contracts with any individuals as independent contractors to provide trucking delivery services. *Id*.

Plaintiff Hernandez was contracted by Defendant as an independent contractor driver for approximately eighteen years. *See* Declaration of Francisco Hernandez ("Hernandez Decl."), ¶ 2. Plaintiff Esqueda was contracted by Defendant as an independent contractor driver for approximately eight years. *See* Declaration of Luciano Esqueda ("Esqueda Decl."), ¶ 2. Plaintiff Lopez was contracted by Defendant as an independent contractor driver from about May 15, 2005 to about January 1, 2023. *See* Declaration of Carlos Lopez ("Lopez Decl."), ¶ 2. Plaintiff Alcala Navarro was contracted by Defendant as an independent contractor driver for approximately five years. *See* Declaration of Ramon Alcala Navarro ("Alcala Navarro Decl."), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On September 28, 2021, Plaintiffs filed this putative class action complaint against Defendant in Los Angeles County Superior Court. Lidman Decl., ¶ 11. On September 28, 2021, Plaintiffs submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and to Defendant advising of their intention of filing a PAGA claim based on the Labor Code violations alleged in their operative complaint. *Id*., **Exhibit 1**. After exhausting the administrative requirements under

the PAGA, on February 7, 2022, Plaintiffs filed a First Amended Class Action and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id*. On April 17, 2024, Plaintiffs filed a Second Amended Class Action and Representative Action Complaint adding a cause of action for failure to pay all wages owed upon termination in violation of Labor Code §§ 201-203, and ending the class period on December 31, 2022 because Defendant stopped using independent contractor drivers as of that date. *Id*.

The primary allegations are that Defendant misclassified the drivers as independent contractors and, as a result,: (1) failed to pay all minimum wages owed; (2) failed to provide accurate, itemized wage statements; (3) failed to reimburse necessary business expenses; (4) made unlawful deductions from wages; (5) failed to pay all wages owed upon termination; (6) engaged in unfair competition; and (7) is liable for civil penalties under the PAGA. Lidman Decl., ¶ 11.

Plaintiffs will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date that they file this Motion and will submit a supplemental declaration evidencing the submission. Lidman Decl., ¶ 37.

III. ***DUNK/KULLAR*** ANALYSIS

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

A. INVESTIGATION AND DISCOVERY

In the instant action, the Parties have engaged in extensive formal discovery, as well as informal discovery as part of mediation. Lidman Decl., ¶ 12. On August 10, 2022, each plaintiff served the following written discovery on Defendant: Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), and Requests for Production of Documents (Set One). *Id*. Additionally, Plaintiff Hernandez served on Defendant Special Interrogatories (Set Two). *Id*. On November 15, 2022, Defendant served its responses and objections

to Plaintiff Hernandez's Special Interrogatories (Set Two). *Id*. On March 6, 2023, each plaintiff served the following written discovery on Defendant: Form Interrogatories – General (Set Two), Requests for Production of Documents (Set Two), and Requests for Admission (Set One). *Id*. Defendant continued to serve responses and objections, as well as supplemental responses and responsive documents through September 2023. *Id*.

On November 6, 2023, Defendant served the following written discovery on each plaintiff: Form Interrogatories – General (Set One), Special Interrogatories (Set One), and Requests for Production of Documents (Set One). Lidman Decl., ¶ 12. On July 25, 2024, Plaintiffs served their responses and objections to Defendant's Form Interrogatories – General (Set One) and Requests for Production of Documents (Set One). *Id*. Plaintiffs served their responses and objections to Defendant's Special Interrogatories (Set One) through September 2024. *Id*.

The *Belaire-West* notice process was completed and the contact information for the putative class members who did not opt out was provided to Plaintiffs on February 10, 2024 and March 10, 2024. Lidman Decl., ¶ 12.

On January 24, 2024 and February 27, 2024, Plaintiffs deposed Defendant's Person Most Knowledgeable regarding various topics related to Plaintiffs' claims. Lidman Decl., ¶ 12.

After agreeing to participate in private mediation, Defendant informally produced data points relevant to the claims alleged. Lidman Decl., ¶ 13.

The formal and informal discovery and data points aided in Plaintiffs' creation of a class-wide exposure model for all the claims at issue, including unpaid wages, unlawful deductions, and penalties potentially owed for alleged wage statement violations and untimely payment of wages. Lidman Decl., ¶ 14. Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. *Id*. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

B. ARMS-LENGTH NEGOTIATIONS

On November 4, 2025, after extensive research and analysis, a full-day mediation was held with Kevin Barnes, Esq., an experienced and well-respected wage and hour class action mediator. Lidman Decl., ¶ 15. During mediation, the Parties vigorously debated their opposing legal positions, the

likelihood of certification of Plaintiffs' claims and the legal basis for the claims and defenses. *Id*.

Although the case did not settle at mediation, the Parties continued to negotiate and ultimately agreed in principle on a class-wide resolution. Lidman Decl., ¶ 15. In the months that followed, the Parties worked to finalize the terms of settlement and finally executed the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"). *Id*.; **Exhibit 2**.

C. THE EXPERIENCE AND VIEWS OF COUNSEL

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl., ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-4; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-4; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendant's policies and Plaintiffs' pay records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. *See* Lidman Decl., ¶ 14. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Lidman Decl., ¶ 15. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

D. AMOUNT OFFERED IN SETTLEMENT IS FAIR AND REASONABLE GIVEN THE REALISTIC VALUE OF CLAIMS

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

Misclassification Claim: Plaintiffs allege that during their employment Defendant unlawfully and willfully misclassified Plaintiffs and other drivers as independent contractors. Lidman Decl., ¶ 19. Plaintiffs allege they and the other similarly situated drivers provided trucking/delivery services which are directly part of Defendant's regular business as a transportation/delivery company. *Id*. Plaintiffs allege the services they provide to Defendant are the kind of work typically done by an employee under the direction of an employer. *Id*. Defendant maintains the trucks and center of operations at its yards

in Wilmington and San Diego, California, which serves as the base of operations for Plaintiffs and other similarly situated drivers. *Id*. Plaintiffs allege Defendant controlled and directed Plaintiffs and the other drivers in connection with the performance of their work, in terms of when and how to pick up their trucks, when and how to pick up and make deliveries, and how to otherwise perform their job duties. *Id*. As such, Plaintiffs contend they are employees of Defendant and were misclassified as independent contractors. *Id*.

Defendant argues that an employment relationship cannot be established on the basis of mandates and policies that are implemented to comply with federal regulations. Lidman Decl., ¶ 20. Defendant contends the contractual relationship between Defendant and the Class Members is governed by the federal motor carrier leasing regulations, which set forth the requirements for a written lease between the owners/lessors of motor vehicle equipment (in this case, the Class Members) and the lessees of that equipment (in this case, Defendants). *Id*. Defendant also asserts that Plaintiffs had significant control over how they performed their duties and whether to even accept certain delivery jobs. *Id*. Accordingly, Defendant asserts that any policies it has that cover independent contractors are in place to meet these requirements and cannot be used to establish an employment relationship. *Id*.

Being that the core question in the case is whether Defendant correctly classified the drivers as independent contractors, considering Defendant's defenses to the misclassification claim, Plaintiffs have discounted each wage and hour claim by 40%. Lidman Decl., ¶ 20.

Minimum Wage Claim: Plaintiffs allege that, while misclassified by Defendant as independent contractors, they and other similarly situated drivers were paid per load on a flat rate. Lidman Decl., ¶ 21. As a result, Plaintiffs contend that they and the and other similarly situated drivers were not separately compensated for time spent working on tasks unrelated to paid loads, including, without limitation, time spent on pre- and post-trip truck inspections, time spent fueling the trucks, time spent completing paperwork and time spent maintaining/washing the trucks. *Id*. As a result, Plaintiffs allege that they and other similarly situated drivers were not paid at least the minimum wage for all hours worked. *Id*. Accordingly, Plaintiffs calculated Defendant's maximum potential exposure for failure to pay minimum wage at $2,922,837.20. *Id*.

Defendant argues that the Independent Contractor Service Agreements ("ICSAs") should be

read to compensate Class Members for all transportation related services, including non-driving time, associated with transporting. Lidman Decl., ¶ 22. Specifically, pay for a "load" was to compensate drivers for all tasks associated with that delivery. *Id*. Further, Defendant contends that each driver's understanding of what the load pay covered would create individualized issues. *Id*. In light of these defenses, Plaintiffs discounted the maximum exposure by 40% for Defendant's defenses, and an additional 45% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $964,536.28. *Id*.

Wage Statement Claim: Plaintiffs also allege that as a result of Defendant's failure to pay all minimum wages, Defendant issued inaccurate wage statements to Plaintiffs and other similarly situated drivers. Lidman Decl., ¶ 23. Nevertheless, because Defendant allegedly misclassified Plaintiffs and other similarly situated drivers as independent contractors, Defendant failed to provide Plaintiffs with any accurate wage statements as required by Labor Code section 226. *Id.* Plaintiffs calculated Defendant's maximum potential exposure for wage statement violations at approximately $464,000. *Id.*

Defendant asserts that any violation of California Labor Code § 226 was not "knowing and intentional." Lidman Decl., ¶ 24; *see* Cal. Lab. Code § 226(e) ("An employee suffering injury as a result of a knowing and intentional failure by an employer" may recover damages") (emphasis added); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1195 (2008) ("Some statutory penalties are imposed only if an employers' violation was 'willful' or 'knowing.'...[S]ection 226, subdivision (e) penalizes an employer's 'knowing and intentional' failure to provide itemized wage statements under section 226, subdivision (a)[.]"). Defendant also contends that employees cannot show that they have suffered an injury because of any potential violation of California Labor Code§ 226, and/or any such issue would be individualized. Lidman Decl., ¶ 24. Accordingly, Plaintiffs discounted the maximum exposure by 40% for Defendant's misclassification defenses, and an additional 30% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $194,880. *Id*.

Reimbursement and Unlawful Deductions Claim: Plaintiffs allege that Defendant failed to reimburse Plaintiffs and the class members for necessary business expenses incurred throughout the relevant time period. Lidman Decl., ¶ 25. Defendant required its drivers who were allegedly misclassified as independent contractors, including Plaintiffs, to pay for, among other things, expenses

related to the purchase of Defendant's trucks, insurance fees/costs, equipment repair costs, maintenance, unloaded mileage, tolls, licensing, fuel and taxes. *Id*. Despite these requirements, Defendant did not reimburse Plaintiffs for incurring these necessary business expenses in violation of California law. *Id*. Further, Defendant illegally deducted such expenses from wages owed, in further violation of California law. *Id*. Accordingly, Plaintiffs calculated Defendant's maximum potential exposure for these reimbursements at $8,712,750. *Id*.

Defendant argues that all but Plaintiffs' claims for cell phone reimbursements are preempted under the federal Truth-in-Leasing regulations and must be dismissed. Lidman Decl., ¶ 26. Indeed, Defendant provided Plaintiffs with a decision from this very Court finding such preemption in a similar case (*Berrios v. CMI Transportation, Inc.*, 20STCV22087). *Id*. Alternatively, Defendant argues that it pays Class Members enhanced compensation to cover business expenses. *Id*. Defendant relies on the case *Gattuso v. Harte-Hanks Shoppers, Inc.* (2017) 42 Cal. 4th 554. In *Gattuso*, the California Supreme Court held that an employer may satisfy its obligation under California Labor Code§ 2802 by paying employees enhanced compensation in the form of increases in base pay or commission rates. In doing so, an employer must show two things: (1) the employer must establish "some method or means to apportion the enhanced compensation to identify what portion is intended as expense reimbursement," and (2) it must show the identified reimbursement amounts are enough to cover expenses incurred. *Id*. at 575. Defendant argues that it paid Class Members an enhanced compensation and that it's detailed on settlement sheets the amounts for compensation and the amounts of expenses. Lidman Decl., ¶ 26. Accordingly, Plaintiffs discounted the maximum exposure by 40% for Defendant's misclassification defenses, and an additional 65 percent to account for Defendant's defenses on the merits to arrive at an estimated exposure of $1,829,677.50. *Id*.

Waiting Time Penalties: Effective January 1, 2023, Defendant no longer provided any trucking delivery services in California and terminated all contracts with any individuals as independent contractors to provide trucking delivery services. Lidman Decl., ¶ 27. As such, all individuals Defendant classified as independent contractors were separated as of January 1, 2023. Lidman Decl., ¶ 10. Plaintiffs allege that based on Defendant's failure to pay all minimum wages owed to Plaintiffs and the members of the putative classes, Defendant failed to pay all wages to Plaintiffs and the members of

the putative classes upon their separation of employment. Lidman Decl., ¶ 27. Therefore, Plaintiffs calculated Defendant's maximum potential exposure for waiting time penalties at approximately $2,460,000. *Id*.

Defendant argues that Plaintiffs would not be able to prove that Defendant "willfully" failed to pay Class Members the appropriate wages due upon separation of employment. Lidman Decl., ¶ 28. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." *Cal. Code Regs. Tit.* 8 § 13520. "A 'good faith dispute' that any wages are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id*. Defendant further contends that any failure to pay wages due at the separation of employment was not willful. Lidman Decl., ¶ 28. Defendant argues that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those wages. *Id*.; *see Cal. Code Regs. Tit.* 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Accordingly, Plaintiffs discounted the maximum exposure by 40% for Defendant's misclassification defenses, and an additional 55 percent to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately $664,200. Lidman Decl., ¶ 28.

PAGA Civil Penalties: Plaintiffs also seek civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 29. Plaintiffs contend that they will be able to show a pattern and practice of willful misclassification in this case. *Id*. Indeed, the class period in this case commences after *Dynamex* was decided. *Id*. Defendant should have known at least then it could not use independent contractors in California to perform the delivery services. *Id*.

For the misclassification issue set forth in Labor Code sections 226.8(b)-(c), the potential civil penalty can range anywhere from $5,000 on the low end to $25,000 on the high end if the Court finds there was a pattern and practice of misclassification which Plaintiffs contend is the case here. Lidman Decl., ¶ 29. Accordingly, with each of the drivers being considered an instance of misclassification as part of a willful pattern, the potential civil penalty can range from $580,000.00 to $2,900,000.00. *Id*.

Additionally, for unlawfully deducting amounts separate from the independent misclassification, there can be an additional civil penalty that will also range from $580,000.00 to $2,900,000.00. *Id*.

Plaintiffs calculated Defendant's potential exposure at $1,160,000 - $5,800,000. Lidman Decl., ¶ 29; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant argues that Plaintiffs' PAGA claim will fail for the same reasons that their underlying claims will fail. Lidman Decl., ¶ 30; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendant also maintains that the civil penalties provided for in Labor Code sections 226.8(b)-(c) is only per instance, meaning that the general misclassification of all of its drivers is only one instance such that the potential penalty is only between $5,000 and $25,000. Lidman Decl., ¶ 30. This is a novel issue which has not been decided by the Courts to date. *Id*. Further, Defendant argues that given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id*.; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiffs discounted the maximum exposure figure by 45 percent for a risk of being unsuccessful on the merits, and an additional 35 percent to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately $414,700. Lidman Decl., ¶ 30.

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiffs predicted the realistic total recovery for the Settlement Class would be approximately $4,067,993.78. Lidman Decl., ¶ 31. The proposed settlement of $2,000,000.00 therefore represents approximately 49% of the reasonably forecasted recovery for the Settlement Class. *Id*.

The proposed settlement reflects approximately 49% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible monetary compensation for hotly disputed claims. Lidman Decl., ¶ 31. Indeed, the percentage of the

liability exposure recovered in this case is above the range of percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class members and will still provide an average recovery to Settlement Class members of ***over $5,000***. Lidman Decl., ¶ 31. Thus, Plaintiffs submit that the proposed settlement is above the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION

Although the Parties engaged in formal discovery throughout this action, the Parties still had formal discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 35. Moreover, Plaintiffs still had to file for class certification and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiffs, and/or an adverse summary judgment ruling. *Id*. Even if the classes sought to be certified by Plaintiffs were in fact certified, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

G. RISK OF MAINTAINING CLASS ACTION STATUS

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

IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

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

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

A. NUMEROSITY IS SATISFIED.

Here, the proposed Settlement Class consists of approximately 205 members and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 17; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "all persons contracted by GOLD POINT in California and classified as an independent contractor driver who operated a truck for GOLD POINT" during the period of September 28, 2017 to through December 31, 2022. Lidman Decl., ¶ 17; Settlement ¶¶ 1.5, 1.12. The Class Members can be readily identified via Defendant's business records.

B. COMMONALITY IS SATISFIED.

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

Here, Plaintiffs contend the Settlement Class Members' claims arise from Defendant's common, uniform policies and practices that applied to Settlement Class Members during the Class Period. Lidman Decl., ¶ 18. Specifically, Plaintiffs alleged that Defendant's common and uniform policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to provide accurate, itemized wage statements; (3) failure to reimburse necessary business expenses; (4) unlawful deductions from wages; (5) failure to pay all wages upon termination; (6) unfair competition; and (7) liability for civil penalties under the PAGA. *Id*. As a result, Plaintiffs argue Defendant had common and uniform policies and practices that applied to all Settlement Class members and their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendant paid all minimum wages owed;
2. Whether Defendant failed to furnish accurate, itemized wage statements;
3. Whether Defendant failed to reimburse necessary business expenses;
4. Whether Defendant made unlawful deductions from wages;
5. Whether Defendant failed to pay all wages upon termination; and
6. Whether Defendant engaged in unfair competition.

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

C. TYPICALITY IS SATISFIED.

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

Here, Plaintiffs' claims are typical of those held by the members of the proposed Settlement Class. First, Plaintiffs were contracted by Defendant during the Class Period as independent contractor drivers who operated trucks, and were subject to Defendant's wage and hour policies at issue in this

case. *See* Hernandez Decl., ¶ 2; Esqueda Decl., ¶ 2; Lopez Decl., ¶ 2; Alcala Navarro Decl., ¶ 2. Second, Plaintiffs were allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. For example, Plaintiffs assert that they were not paid all minimum wages, received inaccurate wage statements, were not reimbursed for necessary business expenses and subject to unlawful deductions from wages, and did not receive all pay at the time their contracts with Defendant ended. *See* Hernandez Decl., ¶ 2; Esqueda Decl., ¶ 2; Lopez Decl., ¶ 2; Alcala Navarro Decl., ¶ 2. Given that Plaintiffs contend Defendant's policies and practices applied to all independent contractor drivers who operated trucks for Defendant, they thus allege Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiffs. Accordingly, because Plaintiffs' claims and those of the Settlement Class all arise from the same alleged conduct, typicality is satisfied.

D. ADEQUACY IS SATISFIED.

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

Here, there are no apparent conflicts of interest between Plaintiffs and the Settlement Class they seek to represent. *See* Hernandez Decl., ¶ 2; Esqueda Decl., ¶ 2; Lopez Decl., ¶ 2; Alcala Navarro Decl., ¶ 2. Indeed, Plaintiffs' interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶ 2-8; Moore Decl., ¶¶ 2-5; Gose-Hardy Decl., ¶¶ 2-4; Haines Decl., ¶¶ 2-8. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class).

V. SETTLEMENT AGREEMENT

A. THE BASICS

1. Class Definition

The proposed Settlement Class is defined as "all persons contracted by GOLD POINT in California and classified as an independent contractor driver who operated a truck for GOLD POINT during the Class Period." Settlement, ¶ 1.5.

The proposed Aggrieved Employee group is defined as "a person contracted by GOLD POINT in California and classified as an independent contractor driver who operated a truck for GOLD POINT during the PAGA Period." Settlement, ¶ 1.4.

2. Class and PAGA Period

For purposes of this Settlement Agreement, the "Class Period" means the period from September 28, 2017 to December 31, 2022. Settlement, ¶ 1.12.

Additionally, for purposes of this Settlement Agreement, the "PAGA Period" means the period from September 20, 2020, to December 31, 2022. Settlement, ¶ 1.29.

B. RELEASE OF CLAIMS

1. Scope

a. Released Class Claims

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, release Defendant Gold Point and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and/or affiliates ("Released Parties") from all claims that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the Class Period including all claims for (1) failure to pay all minimum wages owed; (2) failure to provide accurate, itemized wage statements; (3) failure to reimburse necessary business expenses; (4) unlawful deductions from wages; (5) failure to pay all wages owed upon termination; and (6) unfair competition based on the claims above. Settlement, ¶ 5.2.

b. Released PAGA Claims

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint that are alleged to have occurred during the PAGA Period and the PAGA Notice. Settlement, ¶ 5.3.

2. Release Effective Date

The releases described above will be effective on the date when Defendant fully funds the entire Gross Settlement Amount. Settlement, ¶ 5.

C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of $2,000,000.00. Lidman Decl., ¶ 16, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id*. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id*.

No later than fourteen (14) days after the Effective Date[4], Defendant will transmit the GSA to the Settlement Administrator. Settlement, ¶ 4.2.

2. Deductions from Settlement Amount

The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	**$2,000,000.00**
Minus Court-approved attorneys' fees (35% of the GSA):	$700,000.00
Minus Court-approved, verified costs (up to $35,000.00):	$35,000.00
Minus Court-approved Class Rep. Service Awards ($10,000/P):	$40,000.00
Minus Settlement Administration Costs:	$7,950.00

[4] "Effective Date" means the date on which the Judgment becomes final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement, ¶ 1.17.

Minus PAGA Penalties:	$100,000.00
Net Settlement Amount ("NSA"):	**$1,117,050.00**

Lidman Decl., ¶ 16.

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Awards to Plaintiffs, Settlement Administrator costs, and the PAGA Penalties, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least $1,117,050.00 to all Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 17, Exh. 2. Thus, the average individual payment is estimated to be $5,449.02 as a direct result of this litigation (assuming all Settlement Class members worked the same length of time).

3. Class Representative Service Award

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

Here, as part of the Settlement, Plaintiffs will each separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for their services to the Settlement Class. Lidman Decl., ¶ 34, Exh. 2 (Settlement, ¶ 3.2.1). As will be fully briefed at the time of final approval, Plaintiffs' requested service award is intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiffs undertook by agreeing to serve as a named plaintiff in this case, and the fact that Plaintiffs have agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶34; Hernandez Decl., ¶ 2; Esqueda Decl., ¶ 2; Lopez Decl., ¶ 2; Alcala Navarro Decl., ¶ 2; Settlement ¶ 5.1.

4. Attorneys' Fees and Costs

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*

Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of 35% of the GSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20 to 50 percent, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will apply for an attorneys' fees award of 35% of the GSA, which is currently estimated to be $700,000.00, and up to $35,000.00 in verified cost reimbursement. *See* Settlement, ¶ 3.2.2; Lidman Decl., ¶ 32. Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Lidman Decl., ¶ 32. Further, Plaintiffs have provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 33. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, drafting pleadings, drafting and serving substantial written discovery, reviewing Defendant's discovery responses and meeting and conferring regarding the same, preparing for and conducting the deposition of Defendant's PMK, reviewing Defendant's data points, drafting and negotiating the *Belaire West* notice, communicating with Plaintiffs, drafting a mediation brief, preparing for and attending mediation, negotiating and revising the long-form settlement agreement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 32. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Additionally, *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604, 608 (2004), the California Supreme Court held, "California law continues to recognize the catalyst theory and does not require 'a judicially recognized change in the legal relationship between the parties' as a prerequisite for obtaining attorney fees under [CCP] section 1021.5." According to the Court, "In order to obtain attorney fees [in such circumstances]…, a plaintiff must establish that (1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and

achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense…; and (3) that the plaintiffs reasonably attempted to settle the litigation." *Id.* Plaintiffs satisfy these requirements.

Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

5. Payment Formula

According to Defendant, there are approximately 205 total Settlement Class Members. Lidman Decl., ¶ 17; Settlement, ¶ 8. The Net Settlement Amount shall be allocated to Settlement Class Members who worked during the Class Period by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4.

The parties have agreed to a PAGA award of $100,000.00 and in accordance with California Labor Code section 2699(i). Settlement ¶ 3.2.5. The LWDA will receive 75 percent of the amount attributable to PAGA penalties – or $75,000.00. *Id*. This $100,000.00 represents roughly 5% of the $2,000,000.00 Gross Settlement Amount and is above the zero to two percent range for PAGA claims usually approved by courts. *See, e.g., In re M.L. Stern Overtime Litig*., No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Hopson v. Hanesbrands, Inc*., No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

As for the Individual PAGA Payments, the Settlement Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the PAGA Employees' 25% share of PAGA Penalties, $25,000.00, by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggreived Employee's PAGA Period Pay Periods. Settlement, ¶ 3.2.5.1. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. *Id*.

6. Tax Allocation

The Settlement provides that Individual Class Payments are not subject to wage withholdings and reported on IRS 1099 Forms. Settlement ¶ 3.2.4.1. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment. *Id*.

The Settlement provides that Individual PAGA Payments be reported on IRS 1099 Forms. Settlement ¶ 3.2.5.2.

VI. NOTICE ADMINISTRATION

A. SETTLEMENT ADMINISTRATOR

Phoenix Settlement Administrators' ("Phoenix") fees and expenses are estimated not to exceed $7,950.00. *See* Declaration of Jodey Lawrence in support of Plaintiffs' Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."), ¶ 16. This request is reasonable in light of the proposed class size of approximately 205 Settlement Class members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, Phoenix will translate the Notice and mail the Notice in both English and Spanish to Settlement Class members.

B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR

Phoenix has extensive experience administering class action matters. Lawrence Decl., ¶ 5. Phoenix has administered complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, through final approval and distribution. *Id*. Phoenix has developed a system of quality assurance measures, to ensure the highest quality service is provided in our cases and to class members. *Id*.

C. CLASS LIST FROM DEFENDANT

Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will provide the Settlement Administrator with the Class Data, which includes Class Member identifying information in Defendant's possession including the Class Member's name, last known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods. Settlement, ¶¶ 1.8, 7.4.1.

D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING

Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Settlement, ¶ 7.4.2.

E. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS

Within fourteen (14) days from receipt of the Class Data, the Settlement Administrator shall mail a Notice to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search. Settlement, ¶ 7.4.2.

F. UNDELIVERABLE NOTICE PACKETS

Any Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. Settlement, ¶ 7.4.3. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address. *Id*.

G. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)

The content of the proposed Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the Parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class Member, provides them the opportunity to contest their total workweeks and pay periods included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 2 (Settlement, Exh. A). The proposed Notice will also notify Settlement Class Members of the final approval hearing date and provides Settlement Class Members the contact information for Class Counsel and advises Settlement Class Members that they may enter an appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

H. PROCESSING OF PAYMENTS

Within 14 calendar days after Defendant funds the Gross Settlement Amount, the Settlement Administrator will mail Individual Class and PAGA Payments to Participating Class Members and Aggrieved Employees. Settlement, ¶ 4.3.

I. NOTICE OF ANY CHANGE OF LOCATION OR DATE OF HEARING AND FINAL JUDGMENT

Any changes to date, time, or location of the Final Approval Hearing will be posted on the Settlement Administrator's website. Settlement, ¶ 7.8.1. Notice of the Court's final judgment will also be posted on the Settlement Administrator's website. *Id*.

VII. RESPONSES TO NOTICE

A. RE-MAILED NOTICES

Settlement Class Members to whom Notices are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have 14 calendar days beyond the Response Deadline to submit a Request for Exclusion, Objection, or dispute. Settlement, ¶ 1.41.

B. REQUESTS FOR EXCLUSION

Any Request for Exclusion must be written and reasonably communicate the Class Member's election to be excluded from the Settlement and include the Class Member's name, address, and email address or telephone number. Settlement, ¶ 7.5.1.

The Parties agree there is no statutory or other right for any Settlement Class member to opt out or otherwise exclude himself or herself from the PAGA portion of the Settlement. Settlement, ¶ 7.5.4. A Settlement Class member who submits a valid and timely Request for Exclusion shall still receive his or her proportionate share of the PAGA Amount. *Id*.

C. OBJECTION PROCEDURES

Participating Class Members may object to the class action components of the Settlement. Settlement, ¶ 7.7.1. Written objections may be sent to the Administrator by fax, email, or mail. Settlement, ¶ 7.7.2. Participating Class Members who object may also appear in Court (or hire an attorney to appear in Court) to present their objections at the Final Approval Hearing. *Id*.

VIII. DISTRIBUTION OF UNCASHED FUNDS

The Settlement provides that Settlement Class members have 180 days from the date the

Settlement Administrator mails the checks to cash his or her check. Settlement, ¶ 4.3.1. Any funds remaining after 180 days shall be transmitted by the Settlement Administrator to the California State Controller's Office under the unclaimed property laws in the names and corresponding amounts associated with each Participating Class Member. Settlement ¶ 4.3.3. As all settlement funds will be distributed to the Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

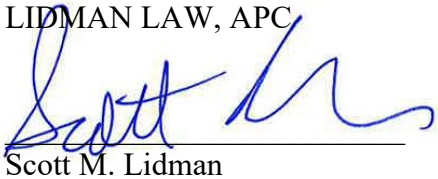
IX. CONCLUSION

This Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

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

Dated: October 8, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: 
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