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Individually and On Behalf of All Others Similarly Situated

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, an individual;
Individually and on Behalf of All
Similarly Situated Individuals,

Plaintiff,

v.

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES, a Pennsylvania
Limited Liability Company; BEST BUY
CO., INC., a Minnesota Corporation; and
DOES 1 through 25, Inclusive,

Defendants.

Case No: 4:22-cv-00587-YGR

[The Honorable Yvonne Gonzalez Rogers]

CLASS ACTION

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

[CONCURRENTLY FILED WITH THE
DECLARATION OF ARMAND R. KIZIRIAN;
[PROPOSED] ORDER]

Date: June 20, 2023

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland Courthouse

**NOTICE OF MOTION AND MOTION TO ALL PARTIES AND THEIR ATTORNEYS
OF RECORD:**

PLEASE TAKE NOTICE that on Tuesday, June 20, 2023 at 2:00 p.m., or as soon thereafter as the matter can be heard in Courtroom 1 of the United States District Courthouse located at 1301 Clay Street, Oakland, California 94612, before the Honorable Yvonne Gonzalez Rogers, Plaintiff Christian Matute (“Plaintiff”) will and hereby does move this Court for an Order Granting Preliminary Approval of Class Action Settlement. Plaintiff’s Motion is based on this Notice and the accompanying Memorandum of Points and Authorities and exhibits thereto; the Declaration of Armand R. Kizirian, and the respective exhibits thereto; the Proposed Order; this Court’s files and records; and any other evidence, briefing, or argument properly before this Court.

Plaintiff filed this class action lawsuit to address his claim that he, and the class he seeks to represent, are employees of Pilot Air Freight LLC d/b/a Pilot Freight Services (“Pilot”) and Best Buy Co., Inc. (“Best Buy”) (collectively “Defendants”), and the Defendants consistently failed to pay the Plaintiff and his fellow contract carriers, truck drivers, and helpers for all hours worked, including overtime, and that they were not provided meal and rest periods.

Defendants vehemently deny all allegations and deny that they are liable, in any way, to Plaintiff or the class that he seeks to represent. Defendants assert that Plaintiff, and the class that he seeks to represent, contracted with Pilot or the businesses that Pilot contracted with to provide delivery services and that Plaintiff, and the class that he seeks to represent, was not employed by either of the Defendants.

Before agreeing to endorse the settlement, Settlement Class Counsel reviewed a substantial number of documents exchanged with Defendants, conducted thorough legal analysis of the claims, interviewed witnesses, and sought the experience and expertise of respected mediator, Francis J. Ortman III, Esq.

Plaintiff, who asks this Court to appoint him as Settlement Class Representative, has negotiated a settlement that, if approved by the Court, will result in the payment of six hundred and fifty thousand dollars (\$650,000.00) to settle the class and PAGA claims at issue here. Plaintiff now seeks preliminary approval of this class action settlement.

Plaintiff believes the settlement is fair, reasonable, and adequate. He respectfully requests that the Court review the Settlement Agreement attached as Exhibit “1” to the Declaration of Armand R. Kizirian (“Kizirian Decl.”), and enter an order:

- (1) granting preliminary approval of the proposed Settlement;
- (2) conditionally certifying the Settlement Class for settlement purposes;
- (3) approving the form, content and method of distribution of the Notice of Proposed Class Action Settlement and Final Approval Hearing and Payment Information Form;
- (4) appointing Michael H. Boyamian and Armand R. Kizirian of Boyamian Law, Inc. as Settlement Class Counsel;
- (5) appointing plaintiff Christian Matute as Settlement Class Representative;
- (6) appointing ILYM Group, Inc. as Settlement Administrator;
- (7) setting a filing deadline for Settlement Class Counsel’s motion requesting attorneys’ fees, costs, enhancement award to Plaintiff, which Plaintiff respectfully requests occur prior to the deadline for Settlement Class Members to file objections; and
- (8) scheduling a hearing regarding Settlement Class Counsel’s request for attorney’s fees and costs, enhancement award to Plaintiff, and final approval of the proposed Settlement.

Dated: May 16, 2023

Respectfully Submitted,
BOYAMIAN LAW, INC.

By: /s/ Armand R. Kizirian
Armand R. Kizirian
Attorneys for Plaintiff CHRISTIAN MATUTE,
Individually and On Behalf of All Others Similarly
Situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Christian Matute (“Plaintiff”) seeks preliminary approval of a settlement on behalf of himself and the Putative Settlement Class comprised of all individuals who performed services as Contract Carriers, Drivers, and/or Helpers delivering products for Best Buy Co., Inc. via Pilot Air Freight, LLC (“Defendants” or “Best Buy” or “Pilot”) (Plaintiff and Defendants together as the “Parties”), and who worked in the State of California between March 28, 2017 and the date of preliminary approval (“Settlement Class” or “Settlement Class Members”).

Plaintiff alleges that he and the Settlement Class Members were misclassified as independent contractors while performing services for Defendants, and therefore were denied the protections of the California Labor Code and wage orders. Plaintiff therefore alleged claims for unpaid wages, minimum wages, overtime pay, meal and rest break violations, failure to reimburse business expenses, wage statement and waiting time penalties, and other legal and equitable relief, as well as reasonable attorneys’ fees and costs.

The main terms of the Settlement are as follows:

- a. Pilot agreed to pay six hundred and fifty thousand dollars and zero cents (\$650,000.00) (“Gross Settlement Amount”) on behalf of Defendants to settle the Action, which shall include the amounts paid to Settlement Class Members, court-approved attorneys’ fees and costs, court-approved class representative enhancement awards, the amounts paid to the LWDA, and court-approved costs of settlement administration.
- b. Settlement Class Members will receive a portion of the Net Settlement Amount as long as they do not opt out of the Settlement by submitting valid and timely exclusion forms to the Settlement Administrator, as set forth below and as explained in the Notice of Class Action Settlement (“Notice”). Settlement Class Members will also be given the opportunity to submit a Payment Information Form in order to submit a tax identification number to ensure payment and to correct any errors as to the number of workweeks worked for Defendants during the period covered by the Settlement.

1 The Settlement Agreement, including all exhibits, is attached as Exhibit “1” to the Declaration
 2 of Armand R. Kizirian in Support of Plaintiff’s Motion for Preliminary Approval of Class Action
 3 Settlement (“Kizirian Decl.”), filed herewith.

4 **III. FACTUAL BACKGROUND AND THE PARTIES’ CONTENTIONS**

5 Defendant Pilot is a logistics company that partners with third-party subhaulers who transport
 6 goods, including mile deliveries, which are the focus of this suit. Pilot contracts directly with licensed
 7 motor carrier Contract Carriers who enter into Subhauler Agreements with Defendants (“primaries”)
 8 to take responsibility for transportation and to provide the trucks and equipment to facilitate transport.
 9 Subhaulers then contract with drivers and helpers who do not contract with Pilot directly, but who are
 10 tendered freight by subhaulers (“secondaries”). Kizirian Decl., ¶ 6.

11 This freight that Putative Settlement Class Members moved was provided by Defendant Best
 12 Buy. Along with Pilot’s personnel, the warehouses that the Contract Carriers, Drivers, and Helpers
 13 operated out of were also staffed by employees of Best Buy. Essentially, while Pilot’s role was
 14 focused more upon the logistics of planning the deliveries to Best Buy’s customers, it is Plaintiff’s
 15 contention that Best Buy’s role was in ensuring that the Contract Carriers, Drivers, and Helpers
 16 provided the appropriate customer experience while conducting the deliveries. Plaintiff Christian
 17 Matute drove as a secondary in the form of a Driver and Helper. Kizirian Decl., ¶ 7.

18 Plaintiff contends that primaries and secondaries, i.e., the Contract Carriers, Drivers, and
 19 Helpers, are misclassified as independent contractors when they are really employees. Defendants
 20 deny that any of the Contract Carriers, Drivers, or Helpers have been misclassified. If Plaintiff were to
 21 establish the employment relationship between Defendants and the Putative Class, Plaintiff contends
 22 that Defendants would owe the Contract Carriers, Drivers, and Helpers substantial compensation for
 23 violation of California’s wage and hour laws as no attempt is made by Defendants to track the Putative
 24 Class’s hours of work, ability to take meal and rest breaks, or reimbursement of the Class’s work
 25 expenses. Kizirian Decl., ¶ 8.

26 This is so, Plaintiff contends, because Defendants maintained no meal period policies, rest
 27 policies, or any other wage and hour policies for the Settlement Class because they simply did not treat
 28 them as employees. Moreover, the expenses Plaintiff contends that Settlement Class Members,

1 particularly Contract Carriers, were forced to shoulder include the costs for things like truck insurance,
 2 fuel, vehicle maintenance, and cell phones used to communicate with dispatch. Defendants deny all of
 3 these claims. Kizirian Decl., ¶ 9.

4 There are approximately 567 Putative Settlement Class Members who currently or formerly
 5 delivered Best Buy products as Contract Carriers, Drivers, and Helpers via warehouses managed by
 6 Defendant Pilot in the State of California. As noted, Plaintiff claims that these Contract Carriers,
 7 Drivers, and Helpers were Defendants misclassified independent contractors who should have been
 8 treated as employees. However, because Defendants maintain that these Contract Carriers, Drivers,
 9 and Helpers were not their employees, Defendants cannot be liable for the allegedly unpaid wages,
 10 penalties, or other damages, that were sought in this action. Kizirian Decl., ¶ 10.

11 **IV. PROCEDURAL BACKGROUND**

12 On September 23, 2021, Plaintiff filed this case in Alameda County Superior Court on behalf
 13 of all current and former individuals who performed delivery services for Defendants as Contract
 14 Carriers, Drivers, and/or Helpers in the State of California from March 28, 2017 and continuing while
 15 this action was pending. The Complaint included nine causes of action: (1) Failure to Pay Minimum
 16 Wages; (2) Failure to Pay Overtime Compensation; (3) Reimbursement of Employment Expenses; (4)
 17 Unlawful Deduction from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and
 18 Permit Rest Periods; (7) Failure to Furnish Accurate Wage and Hour Statements; (8) Waiting Time
 19 Penalties; and (9) Unfair Competition. On January 27, 2022, Plaintiff filed the operative First
 20 Amended Complaint which added a tenth cause of action under the Private Attorneys General Act of
 21 2004. Kizirian Decl., ¶ 11.

22 On January 28, 2022, Defendant Pilot removed this action to the United States District Court
 23 for the Northern District of California. The case was ultimately assigned to the Honorable Yvonne
 24 Gonzalez Rogers. As the Parties held their early meeting of counsel pursuant to Rule 26(f) in the
 25 spring of 2023, Counsel discussed the possibility of attending an early mediation. The Parties agreed
 26 to attend a mediation with Francis J. Ortman III, which was scheduled for December 2, 2022. Kizirian
 27 Decl., ¶ 12.

28 ///

From before they filed suit, but especially in the months leading up to mediation, Plaintiff's Counsel conducted a thorough investigation into the relevant facts and legal claims. Plaintiff's Counsel formulated a list of documents and data they would need from Defendants in order to conduct a meaningful mediation. After meeting and conferring with Defense Counsel on this matter, Defendants informally produced substantial amounts of data and documentary evidence to Plaintiff. With this data, Plaintiff's Counsel consulted with an expert in advance of mediation to determine the amount of damages potentially available to Putative Class Members based on the scope of wage and hour violations, assuming Plaintiff successfully established misclassification. Through the efforts of Plaintiff himself, Plaintiff's Counsel was also able to contact various other Contract Carriers, Drivers, and Helpers of Defendants, thus allowing Plaintiff's Counsel to gain a better understanding of the strengths and weaknesses of the case before attending mediation. Kizirian Decl., ¶ 13.

After a full day of mediation, with the extensive efforts and assistance of Mr. Ortman, the Parties were able to reach a settlement in principle on December 2, 2022. Settlement Class Counsel's experience in litigating numerous independent contractor misclassification suits and the documents and data exchanged by the Parties in the lead up to mediation informed Plaintiff's Counsel decision to endorse the \$650,000 gross settlement amount. Although the Parties agreed upon a settlement figure on December 2, 2022, negotiations regarding the specific terms of the agreement continued into May 2023. Kizirian Decl., ¶ 14.

Based on their independent investigation and evaluation, Plaintiff's Counsel are of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Putative Settlement Class Members, in light of all known facts and circumstances, including the risk of significant delay, the risk that if this matter is litigated a class may not be certified by the Court or that it may later be decertified, the risk that Defendants will prevail on their defenses, as well as potential appellate issues. Kizirian Decl., ¶ 15.

V. TERMS OF THE SETTLEMENT

The complete Settlement Agreement, along with its exhibits, is attached as Exhibit "1" to the Declaration of Armand R. Kizirian, filed concurrently herewith.

**VI. THE PROPOSED SETTLEMENT COMPLIES WITH THE NORTHERN DISTRICT'S
PROCEDURAL GUIDANCE FOR CLASS ACTION SETTLEMENTS**

(1) Information About the Settlement

Scope of the Settlement Class

The Settlement Class is essentially the same as that plead by Plaintiff in his operative First Amended Complaint. The key difference is that the settlement class “exclude[s] all individuals and entities who provided delivery services for Best Buy...as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).” Settlement Agreement, ¶ II(C).

Scope of the Release

While the released claims are broader than the claims asserted by Plaintiff in the First Amended Complaint, they are tied to the plead facts. Particularly, the release specifies that it is based on those claims “...that arise from or are reasonably related to the conduct alleged in the First Amended Complaint...”. Settlement Agreement, ¶ II(DD). Thus, while the release is not strictly limited to the claims asserted by Plaintiff in the operative complaint, the release is not overbroad because it is tied to the alleged conduct of Defendants and prevents Defendants from facing litigation from Settlement Class Members for essentially the same alleged conduct as asserted in this suit, without being so broad as to foreclose *any* possible litigation against Defendants by Settlement Class Members for an overlapping time period.

Value of the Claims

Plaintiff's Counsel offers the following maximum theoretical value of claims. However, the following analysis does not take into account discounting for the merits of certain claims and for potential arguments Defendants may assert to limit liability.

Based on the data provided by Defense Counsel and the outreach undertaken by Plaintiff's Counsel, Plaintiff calculates that Contract Carriers were paid approximately \$32.62 per hour while Drivers and Helpers were paid about \$21.25 per hour. Plaintiff further estimates that the average shift length was approximately 10 hours in length. As the flat pay provided to Contract Carriers, Drivers,

1 and Helpers would not account for overtime, Plaintiff estimates that each Contract Carrier, Driver, and
 2 Helper experienced approximately two hours of off-the-clock time each day. Moreover, Plaintiff notes
 3 that while unpaid minimum wages were a separate cause of action plead in this suit, practically,
 4 because the unpaid time was entirely unpaid *overtime*, the unpaid minimum wages are subsumed
 5 within the unpaid overtime hours. Kizirian Decl., ¶ 16.

6 Projected from their base rates, Plaintiff calculated that the overtime rate for Contract Carriers
 7 was \$48.93 per hour. Similarly, the overtime rate for Drivers and Helpers was \$31.88 per hour.
 8 Across the putative class, Plaintiff's outreach showed that the average Contract Carrier, Driver, and
 9 Helper worked on average five days a week. Thus, the average Settlement Class Member had 10
 10 hours of unpaid overtime wages per week. In the case of Contract Carriers, this resulted in \$489.30 of
 11 unpaid wages, while the analogous amount for Drivers and Helpers was \$318.80. Kizirian Decl., ¶ 17.

12 The data provided by Defendant shows approximately 4,371 workweeks for Contract Carriers
 13 and 11,615 for Drivers and Helpers. Based upon the weekly unpaid wages amount, this results in
 14 \$2,138,730.30 in unpaid overtime for Contract Carriers and \$3,702,862 for Drivers and Helpers. For
 15 the Settlement Class, the total unpaid wages amount is \$5,841,592.30. Kizirian Decl., ¶ 18.

16 As to meal and rest break penalties, the Settlement Class Members damages would be based
 17 upon their regular rate of pay, not their overtime rate of pay. Thus, for Contract Carriers this figure is
 18 \$32.62, and for Drivers and Helpers it is \$21.25 as set forth above. An individual may only receive a
 19 single meal break and a single rest break penalty per day. As Defendants did not have any meal and
 20 rest break policies in place due to the alleged independent contractor misclassification, and as
 21 Settlement Class Members reported constantly being in a state of hurry to Class Counsel to go from
 22 delivery to delivery, Plaintiff believes that the violation rate must be at just about 100%. Kizirian
 23 Decl., ¶ 19.

24 Based upon a five-day a week schedule, Contract Carriers would be entitled to \$326.20 in
 25 weekly meal and rest break penalties. Similarly, Drivers and Helpers would be owed \$212.50 per
 26 week in meal and rest break penalties. Based upon Defendants' data, this would amount to
 27 \$1,425,820.20 for Contract Carriers for the 4,371 workweeks and \$2,468,187.50 for Drivers and
 28

1 Helpers for the 11,615 workweeks. Combined, Plaintiff estimates the Class's damages for meal and
2 rest break penalties totaled \$3,894,007.07. Kizirian Decl., ¶ 20.

3 In terms of waiting time penalties, Plaintiff estimates that up to 250 of the Settlement Class
4 Members became former workers for Defendants within the somewhat shorter statutory period
5 reaching back to March 28, 2018, with turnover being much higher among Drivers and Helpers than
6 with Contract Carriers. For Contract Carriers, based on a \$32.62 hourly wage, a ten-hour workday
7 would result in a daily wage of \$358.82 ($[\$32.62 * 8 \text{ hours}] + [\$32.62 * 1.5 \text{ OT premium} * 2 \text{ hours}]$).
8 Multiplied by thirty days, for an estimated 50 Contract Carriers, this amounts to \$538,230. Kizirian
9 Decl., ¶ 21.

10 For 200 former Drivers and Helpers, based upon a \$21.25 hourly wage, a ten-hour workday
11 results in a daily wage of approximately \$233.76 ($[\$21.25 * 8 \text{ hours}] + [\$21.25 * 1.5 \text{ OT premium} * 2$
12 $\text{hours}]$). Multiplied by thirty days, for an estimated 200 Drivers and Helpers, this amounts to
13 \$1,402,560. For all former Settlement Class Members, the waiting time penalties therefore amount to
14 \$1,940,790. Kizirian Decl., ¶ 22.

15 In terms of inaccurate wage statement penalties, the statutory period for this claim reaches back
16 one year prior to filing suit, i.e., to March 28, 2020. The 15,986 total workweeks reported by
17 Defendants for Contract Carriers, Drivers, and Helpers reach back to March 17, 2017. Plaintiff
18 estimates that about half of these workweeks would have occurred during the statutory period for this
19 claim, i.e., 7,993 workweeks. Based upon a two-week pay period, Plaintiff estimates that there are
20 therefore approximately 4,000 pay periods subject to the wage statement penalty claim. To simplify
21 the arithmetic, if the \$100 penalty amount from Labor Code Section 226(e) is used for these 4,000 pay
22 periods, then the amount owed to the Settlement Class in inaccurate wage statement penalties totals
23 \$400,000. Kizirian Decl., ¶ 23.

24 The unreimbursed business expense claim in this matter is also significant. The most notable
25 unreimbursed business expenses, e.g., fuel costs, truck leasing costs, and insurance costs, would have
26 been borne by the Contract Carriers as opposed to the Drivers and Helpers. Plaintiff believes Contract
27 Carriers paid approximately \$1,000 for these charges per week that were not adequately compensated
28 for by Defendants in their payments to the Contract Carriers. For 4,371 workweeks, this therefore

1 totals \$4,371,000. With Drivers and Helpers, the main unreimbursed business expense would have
 2 been for their cell phones. If this amounted to a weekly unreimbursed charge of \$12.50, then for
 3 11,615 workweeks, this figure amounts to \$145,187.50. Altogether then, the Settlement Class's
 4 unreimbursed business expense claim is worth approximately \$4,516,187.50. Kizirian Decl., ¶ 24.

5 Finally, as for the PAGA penalties, the amount at issue would depend on whether this Court
 6 would permit the 'stacking' of such penalties. *See Smith v. Lux Retail N. Am., Inc.*, 2013 WL 2932243
 7 at *3 (N.D. Cal. June 13, 2013) ("Another necessary but equally flawed assumption undergirding the
 8 Luxottica calculation is the stacking of penalties. For the single mistake of failing to include
 9 commissions in the overtime base, plaintiff has asserted five (count them, five) separate labor code
 10 violations that could lead to statutory penalties.... But is it plausible that we would really pile one
 11 penalty on another for a single substantive wrong?"). If the Court did not permit stacking, then the
 12 class would be entitled to approximately \$100 per pay period as a maximum for PAGA penalties.
 13 Kizirian Decl., ¶ 25.

14 Plaintiff estimates that of the 15,986 workweeks in the class period, approximately half of
 15 them fall within the PAGA period, which goes back to one year prior to the filing of this action. Thus,
 16 the approximately 8,000 workweeks in the PAGA period becomes 4,000 pay periods. With a \$100 per
 17 pay period violation rate, the PAGA penalties would amount to \$400,000 at the highest end. If the
 18 Court did permit stacking, this amount would be many multiples higher. Kizirian Decl., ¶ 26.

19 As a *theoretical maximum accounting for no discounting*, the Settlement Class could claim
 20 \$16,992,576.87 in damages. This is broken down as \$5,841,592.30 in unpaid wages, \$3,894,007.07 in
 21 meal and rest break penalties, \$1,940,790 in waiting time penalties, \$400,000 in inaccurate wage
 22 statement penalties, \$4,516,187.50 in unreimbursed business expenses, and \$400,000 in PAGA
 23 penalties. Kizirian Decl., ¶ 27.

24 The discount applied here between the maximum possible damages and the \$650,000
 25 settlement amount is appropriate given the significant hurdles that this case faces if litigated through to
 26 trial. First, and most prominently, Plaintiff faces a real risk that he may not be able to establish
 27 misclassification. Defendants maintain that Plaintiff and the Contract Carriers, Drivers, and Helpers
 28 were properly classified as independent contractors. To that end, Defendants were careful to impart a

1 degree of control to the Contract Carriers to not run afoul of the ‘control test’ as set forth in *S. G.*
 2 *Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989). Notably, the
 3 *Borello* test is likely applicable to Labor Code claims, most relevantly, to the unreimbursed business
 4 expense claim which has no analogue under the wage orders. *See Bowerman v. Field Asset Servs.,*
 5 *Inc.*, 60 F.4th 459, 472 (9th Cir. 2023); *Garcia v. Border Transportation Group, LLC*, 28 Cal.App.5th
 6 558 (2018). Kizirian Decl., ¶ 28.

7 California’s ‘ABC test’ would not apply to Drivers and Helpers, because as they never
 8 contracted with either Pilot or Best Buy, California’s joint employment test as set forth in *Martinez v.*
 9 *Combs*, 49 Cal. 4th 35 (2010), would apply instead. And Pilot would additionally argue that
 10 California’s ‘business-to-business’ exemption, Cal. Lab. Code § 2776, would prevent the ‘ABC test’
 11 from applying to Contract Carriers, which are organized as formal business entities and often hire their
 12 own workers and control significant fleets of trucks. Kizirian Decl., ¶ 29.

13 Moreover, even under the more favorable standard for determining misclassification that was
 14 set forth in *Dynamex Operations West v. Superior Court*, 4 Cal. 5th 903 (2018), Defendants had
 15 essentially two years before this suit was filed to conform their operations to that decision and ensure
 16 that their operations met the tenets of the ‘ABC’ test. Class Counsel judges that with this case, it
 17 would be more difficult to establish misclassification than in other similar cases, as it appears
 18 Defendant Pilot in particular was careful to calibrate operations to allow Contract Carriers greater
 19 flexibility in their work outside of deliveries for Best Buy, and utilized a business model that directly
 20 contracted only with independent and formally-established businesses with their own fleets of trucks.
 21 Kizirian Decl., ¶ 30.

22 In addition, should this case be litigated, Plaintiff anticipates that Defendants will rely on the
 23 Federal Motor Carrier Safety Administration’s (“FMCSA”) December 21, 2018 decision, which
 24 preempted California’s meal and rest break laws, to defeat those claims in this suit. While Plaintiff
 25 would certainly oppose this, the Ninth Circuit has upheld the FMCSA’s December 21, 2018 decision
 26 affirming the FMCSA’s preemption of meal and rest break laws. *See Int’l Bhd. of Teamsters, Local*
 27 *2785 v. FMCSA*, 986 F.3d 841 (9th Cir. 2021). Thus, barring a change in the law, those claims are
 28 subject to 100% discounting independent of the threshold classification issue. Kizirian Decl., ¶ 31.

Finally, and perhaps most importantly, liability aside, Plaintiff runs the very real risk of not being able to secure class certification on a contested motion. While Plaintiff contends that Settlement Class Members were misclassified, it is nevertheless true that the way each Contract Carrier conducted operations, including from the Drivers and Helpers it formally employed, varied to an extent between them. For the Contract Carriers themselves, the nature of their work was less consistent than with Drivers and Helpers. Thus, even if most or all of the Contract Carriers, Drivers, and Helpers can be said to have been misclassified, whether class certification outside of the settlement context under Rule 23 would be granted is a very different question. Thus, while the \$650,000 gross settlement amount appears at first glance to be a substantial discount on the maximum damages available. Given the risks of this particular suit, the amount is extremely reasonable and results in a good settlement for the putative class. Kizirian Decl., ¶ 32.

Other Cases That Will be Affected by the Settlement

Plaintiff is aware of one other suit that could potentially be affected by the instant settlement. That suit is entitled *David Venegas, et al. v. Pilot Air Freight, LLC, et al.*, Los Angeles County Superior Court Case No. 22STCV14263. The *Venegas* action had a broader class definition than this matter involving all workers who drove for Pilot in California with respect to any of Pilot's customers (not just Best Buy). The *Venegas* action was filed on April 28, 2022, several months after this matter was initiated on September 23, 2021. However, *Venegas* was compelled to individual arbitration and the PAGA representative claims dismissed on February 10, 2023. Thus, while *Venegas* initially appeared to overlap with this matter to some extent, the *Venegas* case is now an individual action. Kizirian Decl., ¶ 33.

Allocation Plan

The settlement funds will be allocated based upon the number of workweeks that Settlement Class Members worked in the statutory period. Settlement Agreement, ¶ IV(J). While there are differences in damages between Contract Carriers on the one hand, and Drivers and Helpers on the other, Class Counsel believes unified allocation plan is fair and reasonable because while the damages are higher for the Contract Carriers, liability and class certification would be more difficult to establish on behalf of the Contract Carriers. Kizirian Decl., ¶ 34.

1 Claim Form

2 No claim form is required. However, the settlement does provide for a Claimant Information
3 Form. The Claimant Information Form will be used to allow Settlement Class Members to provide
4 their tax identification number to the Settlement Administrator. Settlement Agreement, ¶ IV(J).
5 Because Defendants do not have the tax identification number for all Settlement Class Members (as
6 they did not directly contract with all Settlement Class Members), the Parties will encourage
7 Settlement Class Members to submit this form to the Settlement Administrator to ensure that they can
8 receive payment. Kizirian Decl., ¶ 35.

9 Non-Reversionary Settlement

10 This is a non-reversionary settlement. Settlement Agreement, ¶ II(U). Any uncashed funds
11 will be sent to the California State Controller's Unclaimed Property Fund in the name of the
12 Settlement Class Member. Settlement Agreement, ¶ IV(O).

13 **(2) Settlement Administration**

14 See Section VII(A)(6), The Settlement Administrator Costs are Reasonable, *infra*.

15 **(3) Settlement Notice and Payment Information Form, Opt-Outs, and Objections**

16 The Parties have worked to ensure that the Notice of Proposed Class Action Settlement and the
17 Payment Information Form are in plain English and are easily understandable by the Settlement Class
18 Members. These two documents are attached Exhibits "A" and "B" to the Settlement Agreement.
19 Moreover, both of these documents shall be translated into Spanish for the Class Members by the
20 Settlement Administrator. Settlement Agreement, ¶ IV(C).

21 The Notice of Proposed Class Action Settlement contains contact information for Class
22 Counsel (Section 16), the web address for a website maintained by the Settlement Administrator
23 containing key information (Section 23), instructions on how Settlement Class Members may access
24 documents via PACER (Section 23), the date and time of the final approval hearing (Section 20), and a
25 note that the final approval hearing date and time are subject to change (Section 20). Settlement
26 Agreement, Exhibit "A", Notice of Proposed Class Action Settlement.

27 The notice distribution plan is effective because it is the least burdensome process under the
28 circumstances. Class Members will be notified of the settlement via First Class U.S. Mail. Settlement

Agreement, ¶ IV(C). Importantly, this is not a claims-made settlement. However, Settlement Class Members are strongly encouraged to submit Payment Information Forms where they can provide their tax identification number. The Parties set up this process because Defendants do not have the tax identification number for all Settlement Class Members. By requesting, but not requiring, that all Settlement Class Members return the Payment Information Form, Plaintiff believes that the number of Settlement Class Members who will be able to receive a settlement check will be maximized. Kizirian Decl., ¶ 36.

(4) Opt-Outs

Settlement Class Members who wish to exclude themselves from the class settlement may do so by submitting an opt-out to the Settlement Administrator. In order to opt-out, the class member must provide their name, address, telephone number, and the last four digits of their Social Security Number. Settlement Agreement, ¶ IV(E).

(5) Objections

Settlement Class Members are able to object to the settlement by informing the Settlement Administrator or filing directly with the Court. Settlement Agreement, ¶ IV(H)(1); Notice of Proposed Class Action Settlement, Section 9. The Notice of Proposed Class Action Settlement requests that the Settlement Class Member state the basis of their objection, include their full contact information, and provides to the Settlement Class Member the address for the clerk's office for submitting objections. *Id.*

(6) Attorneys' Fees and Costs

See Section VII(A)(4), Plaintiff's Request for Attorneys' Fees and Costs is Reasonable, *infra*.

(7) Class Representative Incentive Award

See Section VII(A)(5), Plaintiff's Proposed Enhancement Award is Reasonable, *infra*.

(8) Cy Pres Awardees

N/A – Any uncashed funds will be sent to the California State Controller's Unclaimed Property Fund in the name of the class member. Settlement Agreement, ¶ IV(O).

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1 **(9) Timeline**

2 Settlement Class Members shall have 60 days to submit the optional Payment Information
3 Form, opt-out, or object to the Settlement. Settlement Agreement, ¶ IV(E), (H), (J)(2).

4 **(10) Class Action Fairness Act (CAFA)**

5 The Settlement Agreement does not specifically address notification under the Class Action
6 Fairness Act (“CAFA”), however, Plaintiff believes Defendants will provide any notice that may be
7 required as a failure to comply effects the enforceability of the release, not the validity of the
8 Settlement. *See* 28 U.S.C. Section 1715(e).

9 Plaintiff is submitting notice of this settlement and the Motion for Preliminary Approval with
10 California’s Labor and Workforce Development Agency contemporaneously with the filing of this
11 Motion. Kizirian Decl., ¶ 37.

12 **(11) Comparable Outcomes**

13 *See* Section VII(A)(3), The Settlement Falls Within the Range of Possible Approval, *infra*.

14 **VII. LEGAL ARGUMENT**

15 **A. Preliminary Approval of the Settlement is Appropriate.**

16 The dismissal or compromise of a class action requires court approval. Fed. R. Civ. P. 23(e).
17 A court should grant preliminary approval of a settlement if it “appears to be the product of serious,
18 informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant
19 preferential treatment to class representatives or segments of the class, and falls within the range of
20 possible approval.” *See In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079.
21 A court should also apply its discretion in light of the judicial policy favoring settlement of complex
22 class action litigation. *See, e.g., Officers for Justice v. CM! Serv. Comtnn of City & Cnty. of San*
23 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625 (“[I]t must not be overlooked that voluntary conciliation
24 and settlement are the preferred means of dispute resolution. This is especially true in complex class
25 action litigation. . .”). As discussed below, application of the relevant factors to this case supports
26 preliminary approval.

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1 1. The Settlement is the Product of Informed, Non-Collusive Negotiation.

2 Adequate discovery and the use of an experienced mediator support the conclusion that
3 settlement negotiations were informed and non-collusive. *See Villegas v. J.P. Morgan Chase & Co.*,
4 (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS 166704, *1546. That is what happened here.

5 In preparation for and during the mediation, the Parties apprised the other of their respective
6 factual contentions, legal theories and defenses. Consequently, extensive and informed, arms-length
7 negotiations occurred during the full-day mediation session with experienced mediator, Francis J.
8 Ortman III, Esq. The mediation was held on December 2, 2022. The Parties were able to reach a
9 Settlement that was based upon the mediator's advice and guidance, Class Counsel's experience in
10 litigating numerous independent contractor misclassification suits, and the exchange of information by
11 the Parties in the lead up to mediation. Although the Parties agreed upon a settlement figure on
12 December 2, 2022, negotiations regarding the specific terms of the agreement continued into May
13 2023. Kizirian Decl., ¶ 38.

14 Thus, here, the Settlement Agreement was reached through arm's-length negotiations by
15 experienced counsel familiar with the applicable law, class action litigation, and the facts of this case.
16 The settlement was the product of well-informed, non-collusive negotiations and mediation.

17 2. The Risks of Further Litigation Support Preliminary Approval.

18 Plaintiff alleges that Defendants improperly misclassified the Putative Class Members as
19 independent contractors exempt from minimum wage, overtime, meal and rest period laws, and the
20 wider protections of the California Labor Code and wage orders. Although Plaintiff believes they
21 have a strong case, further litigation carries numerous risks and obstacles for Plaintiff and Putative
22 Class Members, as described below. Kizirian Decl., ¶ 39.

23 First, Plaintiff may not be able to certify the Putative Class under Rule 23(b). Plaintiff largely
24 relies on the Defendants' uniform business practices that treat the Putative Class Members as non-
25 employees or independent contractors to establish both commonality and predominance. Plaintiff will
26 also argue that other common issues also predominate, such as whether the job expectations and
27 degree of control exercised by Defendants upon the Contract Carriers, Drivers, and Helpers are
28 uniform across the Class. Kizirian Decl., ¶ 40.

Even if Plaintiff can show that Contract Carriers, Drivers, and Helpers were not independent contractors, Defendants can assert numerous defenses regarding liability and damages. For instance, Defendants contend that the Contract Carriers with which they contracted to perform delivery services employed Drivers and Helpers, creating both a conflict within the class if pursued, and also shifting liability away from Defendants. Kizirian Decl., ¶ 41.

With regard to Plaintiff's claims for wage statement and waiting time penalties, both claims are derivative of Plaintiff's primary wage claims. Thus, Plaintiff would recover nothing for himself, or the Class, if the underlying claims are unsuccessful. Kizirian Decl., ¶ 42.

The Defendants' positions in this litigation may result in no recovery for Plaintiff and the Putative Class Members, or protracted appeals and significant risks to meaningful recovery for the Putative Class Members. Consequently, the benefits of the settlement greatly outweigh the risks of continuing to litigate the issues in this case. Kizirian Decl., ¶ 43.

3. The Settlement Falls Within the Range of Possible Approval.

In deciding whether the proposed settlement is adequate and falls within the range of possible approval, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer", while taking into account the risks of continuing litigation. *See In re Tableware Antitrust Litig.* 484 F.Supp.2d at 1080. Courts should recognize that "the agreement reached normally embodies compromise; in exchange for the saving of cost and elimination of risk, the Parties each gave up something they might have won had they proceeded with litigation." *Officers for Justice*, 688 F.2d at 624, (internal quotations and citation omitted). "[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment." *Villegas*, 2012 -U.S. Dist. LEXIS 166704 at 96 (internal quotations and citations omitted).

Here, the Settlement is fair, adequate, and well within the range of possible approval. Without conceding that any adverse rulings would be justified, Plaintiff recognizes the risk of such outcomes as described above. If Defendants were able to prove that the Putative Settlement Class Members are not

employees or properly classified as independent contractors, then the value of the case would be zero. All of Plaintiff's claims and damages rely upon this threshold issue. Kizirian Decl., ¶ 44.

If Plaintiff is able to demonstrate that Contract Carriers, Drivers, and Helpers are employees, not independent contractors, then the value of Plaintiff's claims depend principally on the number of hours worked by Putative Class Members, the frequency at which meal and rest breaks were missed (and the application of FMCSA preemption), unreimbursed business expenses, and derivative penalties. Plaintiff calculates damages as ranging from \$0, if he cannot prevail on the threshold independent contractor versus employee issue, to approximately \$16,992,576.87, if Plaintiff is able to secure class certification and prevail on all claims. Kizirian Decl., ¶ 45.

In order to properly value the claims at issue, however, these figures must be reduced according to the likelihood that Plaintiff will prevail on his motion for class certification. Moreover, even if class certification is granted, the figures must be further be reduced according to the likelihood that Plaintiff will ultimately be able to prevail on the merits. As set forth above, for the purposes of settlement only, Plaintiff acknowledges that this case may face significant hurdles at both the certification and the liability phases of the litigation. Kizirian Decl., ¶ 46.

Based on the foregoing, the Settlement will result in a fair and reasonable award to Settlement Class Members in light of the litigation risks. The net amount of the \$650,000 to be paid to the Class under the proposed Settlement (after payment of Class Counsel's attorneys' fees [\$214,500], litigation costs [\$20,000], Settlement Administration Costs [\$12,550], the Class Representative Enhancement [\$10,000], and LWDA portion of the PAGA allocation [\$24,375]), will be at least \$368,575. For the 567 Putative Class Members, the payout under this amount would be approximately \$650. Thus, the Settlement avoids the risks of litigation while ensuring that Settlement Class Members receive substantial consideration for a release of their claims. The Settlement also affords relief to Settlement Class Members who likely would not have pursued individual claims. Kizirian Decl., ¶ 47.

Under the circumstances, the amount of the settlement is fair, adequate and reasonable. *See Scott v. Bimbo Bakeries USA* (ED. Pa. 2014) No. 2:10cv03154 (ECF No. 174) (approving a settlement of wage and hour claims for payments of \$900 to each current driver and \$450 to each former driver, plus \$12,500 enhancement payments); *Vero v. Aaron Bros.*, (N.D. Cal. 2013) 2013 U.S. Dist. LEX1S

178511 (granting preliminary approval of settlement of wage and hour claims where the average recovery would be between approximately \$28 and \$45); *Bautista v. Harvest Management Sub*, (C.D. Cal. 2013) No. 2:12-cv-10004 (ECF No. 60) (preliminarily approving a \$2.2 million settlement of wage-and-hour violation claims of 14,000-member class).

The plan of allocation is also fair and reasonable. The Settlement provides that the settlement fund shall be allocated based on the number of weeks Settlement Class Members worked during the Class Period. *See, e.g., Ching v. Siemens Indus.*, 2013 U.S. Dist. LEXIS 169279 at *19 (N.D. Cal. 2013) (granting preliminary approval of settlement and finding that weeks worked was a reasonable basis for allocating individual payments). Those Settlement Class Members who return payment information forms will get paid in an amount of their pro rata share of the settlement fund based upon their total weeks of work as shown by Defendants' records. Even those who do nothing may also receive a share of the settlement fund if the Settlement Administrator has a taxpayer identification number on file for them as provided by Defendants. If a Settlement Class Member disagrees with the number of workweeks they have been allocated based upon Defendants' records, the settlement provides a mechanism to contest their allocation as set forth in the notice documents.

4. Plaintiff's Request for Attorneys' Fees and Costs is Reasonable.

The Settlement provides that, prior to the final approval hearing, Class Counsel may petition the Court for an award of fees and litigant expenses. However, the Settlement does not specifically set forth an amount for the attorneys' fees and costs that Class Counsel may seek. Nevertheless, Class Counsel does not intend to seek fees in excess of 33% of the \$650,000 gross settlement, i.e., \$214,500. Similarly, Class Counsel does not intend to seek litigant expenses in excess of \$20,000. *Kizirian Decl.*, ¶ 48.

Class Counsel submit that these amounts are fair and reasonable given their investment of time and expense in pursuing this action, their contingent fee risk, and the result that they have achieved for the Settlement Class Members. The fees that will be requested are based on the amount that will be paid out to the Settlement Class, and are within the range of reasonableness established by Ninth Circuit authority. *See, e.g., Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149 *17 (N.D. Cal. 2009) (observing that class action fee awards average around one-third of the recovery) (citations

omitted); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (2002) (“exceptional results” in “absence of supporting precedents” is relevant to fee determination).

Class Counsel have expended significant time litigating this matter, with a risk of no recovery. With their application for fees and costs, Class Counsel will provide the Court with a detailed breakdown of their hours worked and fees incurred for a lodestar cross-check. Many courts have found that an award of one third of the common fund is warranted under certain circumstances. *See, e.g., In re Heritage Bond Litig.*, No. 02-ML-1475-DT(RCX), 2005 WL 1594389, at *8-*17 (C.D. Cal. June 10, 2005); *Ogbuehi v. Comcast of California/Colorado/Florida/ Oregon, Inc.*, No. 2:13-CV-00672-KJM, 2015 WL 3622999, at *11-*12 (E.D. Cal. June 9, 2015); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, at *6 (E.D.N.Y. Aug. 7, 1998). Class Counsel should be given the opportunity to make such a showing to this Court through their application for fees and costs.

Class Counsel shall file their application for fees and costs well in advance of the final approval hearing date so that Settlement Class Members can be fully informed of the fee request and have ample time to consider the request prior to the deadline for objecting and opting out. *See In re Mercury Interactive Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 994. The fee motion will be heard at the same time as the final approval motion.

5. Plaintiff’s Proposed Enhancement Award is Reasonable.

Service or incentive awards are typical in class action cases. *Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. In evaluating incentive awards, courts may consider “1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995). Here, Class Counsel believe that the Class Representative Enhancement award of \$10,000.00 is consistent with a fair, just and adequate settlement.

Plaintiff initiated this case and sought counsel to represent the proposed Class. Plaintiff met with Settlement Class Counsel and provided documentary evidence relevant to the claims in the case.

Plaintiff also risked his own professional reputation by suing his alleged former employer. Any potential future employer who searches the internet or runs a background check on Plaintiff will discover this fact. In a competitive job market, this factor may weigh heavily against him. Therefore, Plaintiff has also undertaken risks with respect to his future employment prospects that other Settlement Class Members simply have not. Kizirian Decl., ¶ 49.

Plaintiff will provide a supporting declaration at final approval describing his efforts in this case, the amount of time spent serving the class, and the risks he incurred.

6. The Settlement Administrator Costs are Reasonable.

Plaintiff proposes appointing ILYM Group, Inc. (“ILYM”) as the Settlement Administrator in this case. Settlement Class Counsel has elected to use ILYM given their substantial and longstanding experience in the field of class action settlement administration. Moreover, ILYM has provided a very reasonable bid of \$12,550. Kizirian Decl., ¶ 50, ILYM Group, Inc. proposal, attached as Exhibit “2”.

The Settlement Administration Costs will be paid from the Gross Settlement Amount. The estimate from ILYM provides that the settlement administration costs will be approximately \$12,550. The final settlement costs and supporting documentation will be submitted to the Court prior to the final approval hearing. The Settlement Administration Costs here are reasonable as compared to the value of the settlement and the work that needs to be performed to administer the Settlement properly. Kizirian Decl., ¶ 51.

B. The Class Should be Provisionally Certified.

Plaintiff requests that the Court provisionally certify the Rule 23(b)(3) class for settlement purposes. The purpose of provisional class certification is to facilitate distribution to proposed class members of a notice informing them of the terms of the proposed settlement, and the date and time of the final approval hearing. See Manual for Complex Litigation, Fourth §§ 21.632-33. For purposes of effectuating this Settlement only, Defendants Pilot and Best Buy do not oppose Plaintiff’s request to provisionally certify the Putative Class. Settlement Agreement, ¶ IV(A).

1. Standards Governing Approval of Settlement Classes.

When considering a motion for preliminary approval of a settlement, the Court must make a threshold determination as to whether the proposed settlement class meets Rule 23 requirements. See

1 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-20 (9th Cir. 1998). Specifically, under Rule 23(a), the
 2 Court must determine whether (1) the proposed class is so numerous that joinder would be
 3 impracticable; (2) there are questions of law or fact common to the class; (3) the named plaintiffs’
 4 claims are typical of the claims of the proposed class; and (4) plaintiffs and their counsel will
 5 adequately and fairly represent the interests of the class. *Id.* at 1019.

6 Additionally, the action must be maintainable under Fed. R. Civ. P. 23(b) (1), (2), or (3). *Id.* at
 7 1022. Based on these standards, as further discussed below, the Court should certify the proposed
 8 Settlement Class for settlement purposes.

9 2. The Class Satisfies the Requirements of Rule 23(a).

10 The proposed Class satisfies all requirements of Rule 23(a). First, it is sufficiently numerous to
 11 satisfy Rule 23(a)(1). “While there is no set number of members required, courts have generally found
 12 classes numbering in the hundreds to be sufficient to satisfy the numerosity requirement.” *Campbell v.*
 13 *Pricewater-houseCoopers*, 253 F.R.D. 586, 594 (E.D.Cal. 2008). In this case, the proposed class
 14 consists of approximately 567 Settlement Class Members who worked for Defendants during the Class
 15 Period. Kizirian Decl., ¶ 10. This will easily satisfy the numerosity requirement.

16 Second, Rule 23(a)(2) is satisfied because there are questions of law and fact common to the
 17 proposed Class. *See Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 589 (9th Cir. 2012)
 18 (“Commonality only requires a single significant question of law or fact.”). The showing required to
 19 satisfy commonality is minimal. *Hanlon*, 150 F. 3d at 1020. The presence of a single common
 20 question that will “drive the resolution of the litigation” is sufficient *Campbell v.*
 21 *PricewaterhouseCoopers, LLP*, 287 F.R.D. 615, 620 (E.D.Cal. 2012). Here, common factual and
 22 legal issues include whether Putative Class Members are employees that were improperly classified
 23 independent contractors. That issue, alone, satisfies the commonality requirement of Rule 23(a)(2).
 24 Kizirian Decl., ¶¶ 6-9.

25 Third, the typicality requirement of Rule 23(a)(3) is satisfied because Plaintiff’s claims are
 26 typical of the claims held by the Putative Class. Typicality is established if representative claims are
 27 “reasonably co-extensive with those of absent class members; they need not be substantially
 28 identical.” *Hanlon*, 150 F.3d at 1020. Plaintiff’s claims arise out of the same factual and legal

1 circumstances as the claims of Settlement Class Members. Plaintiff contends that, like all Putative
2 Class Members, he was unlawfully classified as an independent contractor, regularly worked unpaid
3 overtime hours, was deprived meal and rest period breaks and premiums, was not given accurate wage
4 statements, and is an ‘aggrieved employee’ under PAGA. Because Defendants’ business practices,
5 about which Plaintiff complains, were uniform and impacted all Putative Class Members, Plaintiff’s
6 claims against Defendants are typical of those of the Class. Kizirian Decl., ¶¶ 6-9.

7 Fourth, Plaintiff’s Counsel satisfies the adequacy requirement of Rule 23(a)(4), as well as the
8 requirements of Rule 23(g). Rule 23(a)(4) requires that the Parties fairly and adequately protect the
9 interests of the class. The adequacy requirement is met where the named plaintiffs and their counsel
10 do not have conflicts of interest with other putative class members, and the named plaintiffs and their
11 counsel will vigorously prosecute the interests of the class. *Hanlon*, 150 F.3d at 1020. Here, Plaintiff
12 and his experienced class counsel will more than adequately represent the Putative Class. There are no
13 conflicts and the Class Representative has claims that are in line with those of the Class. Plaintiff has
14 diligently participated in the litigation by communicating regularly with counsel and providing
15 documents and information about the Class claims. Kizirian Decl., ¶ 49

16 Rule 23(g)(1) requires courts, when appointing class counsel, to consider: (1) the work counsel
17 has done in identifying or investigating potential claims in the action; (2) counsel’s experience in
18 handling class actions, other complex litigation and the type of claims asserted in the action; (3)
19 counsel’s knowledge of the applicable law; and (4) the resources that counsel will commit to its
20 representation. Here, Class Counsel have investigated and prosecuted the claims; have extensive
21 experience in class action litigation, including wage-and-hour claims, and have been appointed Class
22 Counsel in numerous other cases; and have demonstrated that they have the ability and resources to
23 vigorously pursue the claims. Kizirian Decl., ¶¶ 2-5, 13-15. For these reasons, Plaintiff’s Counsel and
24 Plaintiff meet the adequacy requirement of Rule 23(a)(4). Plaintiff’s Counsel should be appointed as
25 Class Counsel pursuant to Rule 23(g).

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1 3. The Class Meets the Requirements of Rule 23(b)(3).

2 The Putative Class meets the requirements of Rule 23(b)(3) because common questions
3 “predominate over any questions affecting only individual members,” and class resolution is “superior
4 to other available methods for the fair and efficient adjudication of the controversy.”

5 First, the Putative Class satisfies the predominance requirement, which examines whether the
6 proposed classes are “sufficiently cohesive to warrant adjudication by representation.” *Hanlon*, 150
7 F.3d at 1022. “When common questions present a significant aspect of the case and they can be
8 resolved for all members of the class in a single adjudication, there is clear justification for handling
9 the dispute on a representative rather than on an individual basis.” *Id.* Here, common issues
10 predominate because Plaintiff’s claims turn on a common liability issue suited to class-wide
11 adjudication: whether or not the Putative Class Members are employees or properly classified as
12 independent contractors under California law, based on their job duties and expectations applicable to
13 all Contract Carriers, Drivers, and Helpers. Whether or not Contract Carriers, Drivers, and Helpers are
14 considered independent contractors under California law is an inherently common question that
15 predominates over any individualized issues. Liability for Plaintiff’s state law claims stem from this
16 threshold question and thus depend upon common proof. Kizirian Decl., ¶¶ 6-9.

17 Second, Rule 23(b)(3) is satisfied because resolution of the issues in this case on a class-wide
18 basis is “superior to other available methods for the fair and efficient adjudication of the controversy.”
19 *See Hanlon*, 150 F.3d at 1023. The alternative to a single class action—numerous individual actions—
20 would be inefficient and unfair. *See, e.g., Custom LED, LLC v. eBay, Inc.*, 2013 U.S. Dist. LEX1S
21 122022 (N.D. Cal. 2013) (superiority established because a “class action would achieve the resolution
22 of the putative class members’ claims at a lower cost and would reduce the likelihood of inconsistent
23 determinations”). Class actions are generally found to be superior where individual claims are
24 relatively small, there is a large volume of individual claims, individuals lack a compelling interest in
25 controlling their own litigation, and there would be a strain on judicial resources if individual claims
26 were filed. *See Wang v. Chinese Daily News, Inc.*, 231 F.R.D. 602, 614 (C.D. Cal. 2005).

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VIII. CONCLUSION

For all of the reasons set forth above, Plaintiff respectfully requests that this Court certify the proposed class for settlement and grants preliminary approval of the proffered class action settlement.

Dated May 16, 2023

BOYAMIAN LAW, INC.

By: /s/ Armand R. Kizirian
Armand R. Kizirian
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Situated