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

STARLA HAGON and MICHAEL
JESPERSEN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

TRANSPORT CORPORATION OF
AMERICA, INC, a Minnesota
Corporation; ERIC ANSON, an individual;
MELINDA GREEN, an individual, and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2203409
*[Assigned to Hon. Jessica Morgan, Dept. S26,
for all purposes]*

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
DECLARATIONS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Hearing

Date: April 5, 2024

Time: 8:30 a.m.

Dept.: S26

Complaint filed: February 14, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 5, 2024, at 8:30 a.m. or as soon thereafter as the
matter may be heard by the Honorable Jessica Morgan in Department S26 of the San Bernardino
County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiffs
Starla Hagon and Michael Jespersen, individually and on behalf of all others similarly situated,
will and hereby do move the Court for entry of an Order preliminarily approving the Parties'
class action settlement, including:

1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiffs as class representatives for settlement purposes;
3. Appointing Plaintiffs' counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the settlement;
6. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declarations of Plaintiffs and Plaintiffs' counsel (Brian Mankin and Misty Lauby) in support thereof; the Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: March 4, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiffs and the Proposed
Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs and Class Representatives, Starla Hagon and Michael Jespersen, seek
4 preliminary approval of a \$515,000 wage-and-hour class action settlement (“Settlement
5 Amount”) on behalf of all current and former truck drivers who resided in California and who
6 were employed by Defendant Transport Corporation of America, Inc., at any time during the
7 Class Period of February 14, 2018, through March 4, 2024.

8 Under the terms of the Settlement Agreement, Defendants will not oppose Plaintiffs
9 Counsel’s application for a reasonable award of attorney’s fees not to exceed the total amount of
10 \$171,666.66 (which is 1/3 of the Settlement Amount), Plaintiffs Counsel’s litigation expenses
11 not to exceed \$20,000, Settlement Administrator Costs of \$6,500, PAGA Payment of \$50,000 (of
12 which \$37,500 or 75% will be paid to the LWDA and the remaining \$12,500 or 25% will be paid
13 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$7,500 each to
14 Plaintiffs Starla Hagon and Michael Jespersen. (S.A. ¶ 49(a-h)).

15 After all Court-approved deductions from the Settlement Amount, it is estimated that
16 \$251,833.34 will be available to pay the Class Members, as follows:

17

<i>Settlement Amount</i>	\$ 515,000.00
Attorneys’ Fees (1/3)	\$ 171,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,500.00
PAGA Payment	\$ 50,000.00
Class Representative Service Awards	\$ 15,000.00
<i>Net Settlement Amount</i>	\$ 251,833.34

21

22 Assuming 200 Class Members, the average payment to each class member will be
23 approximately \$1,259.16 (\$251,833.34 / 200). Of course, the actual payment will be calculated
24 on a pro-rata basis according to the number of Weeks Worked by each Class Member.

25 Assuming an estimated 17,500 Weeks Worked, each Workweek will have a value of
26 approximately \$14.39 on average. In addition, the Aggrieved Employees (*i.e.*, individuals who
27 worked during the PAGA Period of February 9, 2021, through March 4, 2024), will receive a pro
28 rata share of the \$12,500 PAGA Payment (accounting for 25% of the total \$50,000 allocation).

Moreover, there are approximately 100 Aggrieved Employees who collectively worked approximately 10,000 Workweeks during the PAGA Period. (Mankin Decl., ¶ 9).

The settlement is non-reversionary and Class Members will not be required to submit claim forms to receive payment, but each Class Member will receive the Class Notice containing information about his/her estimated share, the opportunity to dispute the number of Weeks Worked, and the opportunity to opt-out or object to the settlement. All Class Members who do not affirmatively opt-out will receive a settlement check upon the Court granting final approval. Likewise, all Aggrieved Employees will receive a share of the PAGA Payment once the settlement receives final approval.

Because the settlement is fair and reasonable and was negotiated at arm's length by experienced counsel and an experienced mediator following a sufficient exchange of information and documents prior to mediation, it should be preliminarily approved. Plaintiffs respectfully request that the Court enter an order preliminarily approving the settlement, conditionally certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed Class Notice, appointing Plaintiffs' counsel as class counsel, appointing Phoenix Settlement Administrators as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

All current and former truck drivers who, based on TCA's current records, had a primary residence in California and who were employed by Defendant Transport Corporation of America, Inc., at any time during the Class Period of February 14, 2018, through March 4, 2024. (S.A. ¶ 7).

B. PROCEDURAL HISTORY

On February 9, 2022, Plaintiffs submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for alleged civil penalties under the Labor Code Private Attorneys General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendants

1 requesting the production of their personnel and timekeeping records in order to further evaluate
2 their wage and hour claims. (Mankin Decl., ¶ 12).

3 On February 14, 2022, Plaintiffs filed a putative class and representative PAGA action in
4 the San Bernardino County Superior Court, alleging Class Claims and PAGA Claims, including:
5 (a) failure to pay minimum and regular wages, (b) failure to pay for nonproductive time under
6 Labor Code § 226.2, (c) failure to reimburse for business expenses, (d) failure to timely pay final
7 wages, and (e) failure to provide accurate itemized wage statements; (f) unfair and unlawful
8 competition, and (g) related PAGA claims. (Mankin Decl., ¶ 13).

9 Defendants retained counsel and began to vigorously defend the case, including noting in
10 the Joint CMC Statement “that discovery will demonstrate that it compensated putative class
11 members for all time they spent working. Defendants further contend that all of the putative
12 class’s reasonably necessary business expenses were reimbursed. And as a result, each of
13 Plaintiff’s derivative claims must fail.” Consequently, the Parties commenced written discovery.
14 (Mankin Decl., ¶ 14).

15 However, after discussions amongst counsel, the Parties agreed to attend private
16 mediation to determine if the case could be resolved prior to a contested class certification
17 process discovery and. In preparation for the mediation, the Parties informally exchanged
18 documents and information that allowed both sides to calculate the potential damages and
19 evaluate potential risk, including policies and procedures pertaining to each claim alleged, and
20 statistics relating to the number of current and former employees, number of shifts, pay periods
21 worked and other things. In this regard, Defendants provided a random sampling of timekeeping
22 and payroll records of the Class Members. This robust sampling enabled both parties to take a
23 deep dive into the claims. Additionally, during this process, Plaintiffs and their counsel
24 analyzed, researched, and investigated the potential issues, including matters related to the
25 calculation of damages, trial, and appellate issues and risks. (Mankin Decl., ¶ 15).

26 On December 20, 2023, Plaintiffs and Defendants participated in mediation before Mark
27 LeHocky, an experienced class action wage and hour mediator. At the conclusion of mediation,
28 Mr. LeHocky issued a mediator’s proposal, which was ultimately accepted by the Parties.

1 (Mankin Decl., ¶ 16). The Parties now seek the Court’s preliminary approval of the Settlement.

2 **C. SUMMARY OF THE CLAIMS AND DEFENSES**

3 Plaintiffs alleged numerous wage and hour violations on behalf of the Class Members.
4 However, Defendants vigorously contested and denied Plaintiffs’ material allegations on the
5 merits and as to the propriety of a class action or PAGA representative action.

6 Plaintiff alleged that Defendants subjected the Class Members to numerous violations of
7 the California Labor Code, including: (1) failure to pay minimum wages; (2) failure to pay for
8 nonproductive time under Labor Code § 226.2; (3) failure to reimburse expenses; (4) failure to
9 timely pay wages; (5) failure to provide accurate itemized wage statements; (6) unfair and
10 unlawful competition. Additionally, Plaintiff alleged PAGA claims for (7) failure to pay
11 minimum wages; (8) failure to pay for nonproductive time under Labor Code § 226.2; (9) failure
12 to reimburse business expenses; (10) failure to timely pay wages each period; (11) failure to
13 timely pay final wages; and (12) failure to provide accurate itemized wage statements.

14 One of the primary claims in this action is for wage statement violations -alleging that
15 Defendants’ uniform wage statements had three distinct violations of Labor Code § 226 on every
16 paystub because each: (1) failed to state the hours worked at each hourly rate; (2) failed to state
17 total hours worked during the pay period; and (3) failed to state the correct legal name of the
18 employer.

19 Plaintiff alleges that these violations, affecting all Class Members during the applicable
20 period, directly violated Labor Code § 226(a), and run afoul of the stated purpose of Section
21 226(a): to “document the paid wages to ensure the employee is fully informed regarding the
22 calculation of those wages.” *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392.
23 Furthermore, these facts present far more than a mere “technical” violation of § 226(a) because
24 “[w]age statements should include the hours worked at each rate and the wages earned” and the
25 failure to include the rate establishes a “deemed injury” under § 226(e)(2)(B). *Maldonado v.*
26 *Epsilon Plastics* (2018) 22 Cal.App.5th 1308, 1336.

27 However, Defendants argued that Labor Code § 226 is inapplicable to its workers under
28 *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732 arguing that § 226 does not apply if a driver’s

1 principal place of work is not California. In addition, Defendants argument the wage statements
2 contained hours worked and the wages required by § 226, in particular after TCA began paying
3 California-resident drivers hourly pay. Finally, Defendants argued that the trade name provided
4 on the wage statements complied with § 226.

5 Plaintiff also alleged minimum wage violations due to two distinct issues.

6 *First*, Plaintiffs and the Class Members were forced to perform off-the-clock work
7 without compensation. For instance, Plaintiffs recorded their daily work hours via electronic log
8 on the truck. However, Plaintiffs were not able to immediately clock in after arriving at work, as
9 he had to turn on the truck to power up the e-log system, wait for it to update, and only then was
10 he able to clock in. Both of these examples violate California law and lead to unpaid minimum
11 wages. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not
12 allow employers to require employees to routinely work for minutes off the clock without
13 compensation”); *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when
14 employee is under company’s control and where the tasks served the employer’s interests).

15 *Second*, certain Class Members were drivers who were paid solely on piece-rate (per-
16 mile) basis. But TCA’s per-mile policy directly violated California law because it did not
17 provide separate compensation for non-driving time. See *Gonzalez v. Downtown LA Motors*
18 (2013) 215 Cal.App.4th 36 (“*DTLA*”) (establishing the bright-line rule that piece-rate employees
19 must be separately compensated at, or above, the minimum wage for all time during which they
20 are unable to earn piece-rate compensation); Labor Code § 226.2 (codifying the holding of *DTLA*
21 and mandating that piece-rate employees receive separate compensation for rest breaks and other
22 nonproductive time).

23 Defendants denied that Plaintiff and Class members had to spend any off-the-clock time
24 before clock in and the drivers could log in immediately upon entering the truck. Moreover,
25 Defendants denied that they failed to pay the drivers for for non-driving time under *Ayala v. U.S*
26 *Xpress Enterprises, Inc.*, 851 F. App'x 53, 54 (9th Cir. 2021) (citing *Oman v. Delta Air Lines,*
27 *Inc.*, 9 Cal.5th 762, 264 Cal.Rptr.3d 20, 466 P.3d 325, 341 (2020)), and that the question of
28 whether the drivers and TCA agreed their trip pay covered non-driving tasks could not be

1 resolved on a class-wide basis. Finally, Defendants argued Plaintiffs' wage claim are limited to
2 work performed inside California, making Plaintiff's calculation of alleged damages inflated.

3 Plaintiffs further alleged that Defendants' liability on these unpaid wage claims triggers
4 liability and exposure for the unpaid wages and various penalties, including full 30-day waiting
5 time penalties for each former employee under Labor Code § 203. But Defendants argue that if
6 Plaintiffs' claims fail on the underlying minimum wage claims, the derivative waiting time
7 claims would also fail. In addition, Defendants argued Section 203 did not apply to the class
8 under *Ward*, 9 Cal.5th 732, because the class was not based in California.

9 Additionally, Plaintiff claims that Defendants are liable under Labor Code § 2802 due to
10 its failure to reimburse Class Members for use of personal cell phones for business purposes. But
11 Defendants disputed the § 2802 claim for the entire class period arguing that it provided an in-
12 cab device so Plaintiff and the Class Members could communicate with Defendants and,
13 therefore, it was not necessary for drivers to use their personal cell phones for business purposes.
14 In addition, Defendants argued the class could not recover damages for expenses incurred from
15 using their cell phones outside the state of California.

16 Despite the disputed nature of the claims, the Parties concluded that further litigation of
17 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
18 finally settled to limit further risk, expense, and protracted litigation.

19 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

20 The following is a summary of the principal terms of the Settlement Agreement.

21 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

22 The \$515,000 Settlement Amount is non-reversionary and will be paid out to Class
23 Members without the need to submit a claim form or take any affirmative action. It includes (1)
24 Plaintiffs' attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
25 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
26 \$6,500; (4) a \$50,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
27 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
28 aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 49(a-h)).

Defendants will separately pay their share of employer's payroll taxes and withholdings.

After all Court-approved deductions from the Settlement Amount, it is estimated that \$251,833.34 will be available to pay the Individual Settlement Amounts to approximately 200 Class Members. Thus, the average settlement payment is approximately \$1,259.16.

B. NOTICE PROCEDURES

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the number of workweeks he/she is credited (Exhibit B to the Mankin Decl.). Within 14 days after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class Members containing names, addresses, Social Security numbers, and total Weeks Worked during the PAGA Period and the Class Period (the "Class Data"). (S.A. ¶¶ 10, 64).

Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate the number of weeks worked for each Class Member, populate the Class Notice for each, and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 65-66).

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. (S.A. ¶ 67).

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. In order to Opt-Out of the Settlement, the Class Member must submit a written request to the Settlement Administrator no later than 30 days after being mailed by the Settlement Administrator ("Response Deadline"). (S.A. ¶¶ 37, 71). Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 71(a)).

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement must submit a written

1 objection to the Settlement Administrator no later than the Response Deadline. The objection
2 must include the case name and number and must set forth, in clear and concise terms, a
3 statement of the reasons why the objector believes that the Court should find that the proposed
4 Settlement is not in the best interest of the Class and the reasons why the Settlement should not
5 be approved, including the legal and factual arguments supporting the objection. (S.A. ¶ 71(c)).

6 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

7 The amount of each Class Member's Individual Class Payment is tied to the number of
8 Weeks Worked by each Class Member during the Class Period. Individual Class Payments are
9 calculated by (a) dividing the Net Settlement Amount by the total number Weeks Worked by all
10 Participating Class Members during the Class Period, and (b) multiplying the result by each
11 Participating Class Member's Weeks Worked. (S.A. ¶ 49(c)).

12 Additionally, each Aggrieved Employee will receive an Individual PAGA Payment
13 calculated based on the pro rata, whereby the \$12,500 PAGA Payment allocated to the
14 Aggrieved Employees will be divided and paid on a Weeks worked basis. (S.A. ¶ 49(h)).

15 The Class Notice will inform Class Members of the estimated share and the number of
16 Weeks Worked during the Class and PAGA Period. Class Members may dispute Weeks Worked
17 if they feel they worked Weeks more in the Class or PAGA Periods than Defendants' records
18 show by timely submitting evidence to the Administrator. (S.A. ¶ 65-66).

19 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

20 Defendants are required to deposit the Settlement Amount, along with the employers'
21 share of payroll taxes owed, with the Settlement Administrator within 20 days after the Effective
22 Date. These funds will be used to pay: (1) the class attorney fees and expenses, as approved by
23 the Court; (2) the service awards, as approved by the Court; (3) administrative expenses, as
24 approved by the Court; (4) a \$50,000 PAGA award; and (5) the aggregate of all Individual
25 Settlement Amounts of participating Class Members. (S.A. ¶ 72). Within 10 days of receipt of
26 the payment, the Settlement Administrator shall issue payments to cover all court-approved
27 payments. (S.A. ¶ 73).

1 Class Members will have 180 days to cash his/her settlement check. If a Class Member or
2 Aggrieved Employee fails to cash a check by the deadline, then the Settlement Administrator
3 shall issue the unclaimed funds to the California State Controller in the name of the Class
4 Member and/or Aggrieved Employee. (S.A. ¶ 74).

5 **F. TAX TREATMENT**

6 The Parties agree that 20% of the Individual Class Payments will be allocated as wages
7 subject to withholding of all applicable local, state and federal taxes and the remaining 80% will
8 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226,
9 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). The Individual PAGA
10 Payments will be classified entirely as civil penalties and shall be reported as required on an IRS
11 Form 1099. (S.A. ¶ 49(h)). Defendants will separately pay their share of employer payroll taxes
12 on the sum allocated to wages. (S.A. ¶ 49(a)).

13 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

14 In exchange for these payments, the Settlement Agreement ¶ 32 provides that the
15 Participating Class Members will release the Released Parties of the Released Class Claims, as
16 follows:

17 All claims stated in the Complaint and those reasonably arising out
18 of the facts stated in the Complaint, that were or could have been
19 pled under local, state, or federal law reasonably arising out of or
20 relating to the facts alleged in the Complaint against the Released
21 Parties for the duration of the Class Period, including: (1) failure to
22 pay minimum wages, (2) failure to pay for nonproductive time under
23 Labor Code 226.2, (3) failure to reimburse business expenses, (4)
24 failure to timely pay final wages, (5) failure to provide accurate
25 itemized wage statements, and (6) unfair and unlawful competition.
26 The time period governing the Released Class Claims shall be the
27 Class Period.

28 It is understood and agreed that the Settlement Agreement will not release any person,
party or entity from claims, if any, by Class Members for any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or claims based on

1 facts occurring outside the Class Period.

2 **H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS**

3 The Settlement Agreement ¶ 33 also defines the “Released PAGA Claims” as follows:

4 [A]ll claims for civil penalties under PAGA, that Plaintiffs alleged
5 or could have reasonably alleged against the Released Parties, on
6 behalf of Aggrieved Employees and the State of California,
7 reasonably arising out of or relating to the facts or claims alleged in
8 the Complaint and the relevant LWDA notice letters, including all
9 PAGA claims seeking civil penalties, attorneys’ fees, and/or interest
10 premised upon: (1) failure to pay minimum wages, (2) failure to pay
11 for nonproductive time under Labor Code 226.2, (3) failure to
12 reimburse business expenses, (4) failure to timely pay wages each
13 period, (5) failure to timely pay wages upon separation of
14 employment, (6) failure to provide accurate itemized wage
15 statements, and (7) all other claims for civil penalties recoverable
16 under the Private Attorneys General Act, Labor Code §§ 2698 et
17 seq. based on the facts or claims alleged in the LWDA notice letters
18 and Complaint. The time period governing the PAGA Released
19 Claims shall be the PAGA Period. The PAGA Released Claims do
20 not release any Aggrieved Employees’ claims for wages or statutory
21 penalties.

22 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
23 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted
24 by law and will receive a pro-rata share of the PAGA Penalties (i.e., an “Individual PAGA
25 Payment”). (S.A. ¶ 71(a)).

26 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
27 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
28 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

California Rule of Court 3.769(d) provides that the Court may make an order approving
certification of a provisional settlement class at the preliminary approval stage. It is well-
established that trial courts should use a “lesser standard of scrutiny” for determining the
propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
Co. (1996) 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in
a settlement class, so the case management issues inherent in determining if the class should be

certified need not be confronted; and the trial court’s fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice v. Civil Service Com.* (9th Cir. 19150) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”). As discussed below, for the purposes of this settlement only, Plaintiffs request that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 3150.

A. NUMEROSITY AND ASCERTAINABILITY

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See* Cal. Code Civ. Proc. § 3150. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101. Here, according to Defendants’ records, there are approximately 200 Class Members. This figure satisfies the numerosity requirement.

B. WELL-DEFINED COMMUNITY OF INTEREST

I. Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v. Superior Court* (2001) 24 Cal.4th 906, 913. Plaintiffs contend that the Class was subject to common policies and practices relating to the payment of wages, reimbursement of expenses, wage statements, final pay, among other things. While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree to class certification for the purposes of this settlement only.

1 2. Typicality

2 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
3 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
4 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
5 Plaintiffs’ claims are typical of the Class for the purposes of any continued litigation of the
6 Action, but agree for the purposes of this settlement only, that Plaintiffs assert claims regarding
7 Defendants’ wage statements, reimbursement of expenses, and the provisions governing the
8 timely and complete payment of wages, which are at the core of the lawsuit.

9 3. Adequacy of Representation

10 The proposed class representative must establish that he or she will adequately represent
11 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
12 546. Specifically, Plaintiffs are adequate to represent the class because they was employed by
13 Defendant as a truck driver during the Class Period, experienced the same wage and hour
14 practices as the rest of the Class, understood their duties as a Class Representatives, have been
15 willing to undergo the risks of litigation, and have no conflict of interest.

16 Adequacy may be established by the fact that counsel are experienced practitioners. *See*
17 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
18 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive
19 experience in wage and hour class actions like the instant matter. (Mankin Decl. ¶¶ 2-6).

20 4. Superiority

21 Certification of the Class for settlement purposes is superior here because there will be a
22 global resolution of all claims at once, which fosters judicial economy. Class certification for
23 settlement purposes is also vastly superior to litigation of numerous individual claims because
24 most of the claims are too small to litigate outside of the class context.

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1 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
2 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

3 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
4 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

5 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
6 particularly true in class actions where substantial resources can be conserved by avoiding the
7 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
8 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
9 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
10 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
11 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
12 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

13 The decision to approve or reject a proposed settlement lies within the Court's sound
14 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.
15 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
16 approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
17 conclusions on the contested issues of fact and law which underlie the merits of the dispute."
18 *Officers for Justice*, 688 F.2d at 625.

19 The Court's ultimate duty is to determine whether the settlement is fair, adequate, and
20 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable"
21 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
22 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
23 after determining that it is "'fair, adequate and reasonable,'" considering factors such as the
24 "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys
25 broad discretion in making its fairness determination, and should consider factors including, but
26 not limited to:

27 [T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration
28 of further litigation, the risk of maintaining class action status through trial, the
amount offered in settlement, the extent of discovery completed and the stage of

1 the proceedings, the experience and views of counsel . . . and the reaction of the
2 class members to the proposed settlement.

3 *Dunk, supra* (detailing non-exhaustive list of factors for court’s consideration at final approval).

4 The above factors are not exclusive “and the court is free to engage in a balancing and
5 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
6 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
7 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
8 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
9 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal
10 quotation marks omitted).

11 At the preliminary approval stage, the Court need only determine that the settlement falls
12 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
13 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
14 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
15 . . and [the settlement] appears to fall within the range of possible approval.” *Manual For*
16 *Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal.App.4th at 1802. A “presumption
17 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
18 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
19 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
20 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
21 approval because there are no grounds to doubt its fairness.

22 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
23 **NEGOTIATIONS**

24 The settlement was the product of extensive arm’s length negotiations between counsel
25 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
26 professional, the settlement negotiations were adversarial and non-collusive in nature. The
27 settlement reached is the product of substantial effort by the parties and their counsel. Although
28 Plaintiffs and their counsel believed that there was a possibility of certifying the claims, they

1 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
2 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
3 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
4 prevailed on any of their defenses, the employees may not have received any monetary recovery.

5 **C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**
6 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

7 Plaintiffs thoroughly investigated and evaluated the factual and legal strengths and
8 weaknesses of this case before reaching the settlement. As described above, the settlement was
9 reached after extensive investigation and research, thorough calculations and risk evaluation, and
10 a substantial exchange of information relating to the Class Members prior to mediation.

11 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

12 To evaluate a settlement, the parties must provide the trial court with “basic information
13 about the nature and magnitude of the claims in question and the basis for concluding that the
14 consideration being paid for the release of those claims represents a reasonable compromise.”
15 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
16 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
17 Cal.App.4th 399, which held that an explicit statement of the maximum theoretical amount that
18 the class could recover was not necessary:

19 Greenwell misunderstands *Kullar*, apparently interpreting it to
20 require the record in all cases to contain evidence in the form of an
21 explicit statement of the maximum amount the plaintiff class could
22 recover if it prevailed on all its claims – a number which appears
23 nowhere in the record of the case. But *Kullar* does not, as Geenwell
24 claims, require any such explicit statement of value; it requires a
25 record which allows “an understanding of the amount that is in
26 controversy and the realistic range of outcomes of the litigation.

27 A settlement is not judged against what might have been recovered had a plaintiff
28 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
29 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
30 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
31 by the proposed settlement is substantially narrower than it would be if the suits were to be

successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”)

Of particular relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. First, in addition to disputing the merits of Plaintiffs' claims, Defendants strongly disputed that Plaintiffs could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendants further argued that they complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiffs' ability to certify the class. While Plaintiffs assert that this is a suitable case for certification, they realize that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that he could pursue on a class basis.

In light of the uncertainties of protracted litigation, this negotiated settlement reflects the best practicable recovery for the Class. While the total settlement amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the parties, resulting in a fair and equitable settlement.

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiffs' counsel estimated the following data points through the date of mediation:

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following data points through the date of mediation: (1) approximately 181 total Class Members, (2) approximately 16,687 workweeks for the Class Period, and (3) approximately 1,9841 wage statements issued during the PAGA Period through mediation. From these metrics, and when factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

Wage Statement Claims

Plaintiff contends that the strongest claim was for wage statement violations, based on the allegation that Defendants failed to include all information required by Labor Code § 226(a).

1 Plaintiff calculated the maximum potential value of this claim as \$975,050 under the \$50/\$100
2 formula in § 226(e). In addition to the defenses set forth above, Defendants raised further
3 defenses, including that: (a) these violations, if any, did not result in any “injury” under § 226(e),
4 (b) the violations, if any, were not “knowing and intentional” and could not support the
5 assessment of penalties, and (c) “derivative” wage statement claims are without merit, for the
6 reasons discussed above. As a result of the defenses, Plaintiff assigned a 25% risk at the class
7 certification stage and 35% risk adjustment on the merits, and calculated the value of damages to
8 be \$475,337.

9 **Failure to Pay Wages**

10 Next, Plaintiff alleges that Defendants employed two violative policies: (1) failure to pay
11 all wages due to off-the-clock claims, and (2) unpaid non-productive time wages. Plaintiff
12 calculated the maximum potential value of the off-the-clock claims to be \$143,722 estimating
13 .25 hours per shift x \$13 minimum wage for a maximum value of \$143,722 and the maximum
14 potential value of \$804,840 (15,478 x 1 unpaid hour x \$52 (avg rate pay + liquidated damages)
15 for the off-the-clock claims. Combined the total maximum unpaid wage claims were estimated
16 at \$948,562. As discussed above, Defendants asserted several defenses to this claim. And at
17 mediation, Defendants argued that this claim could not be certified due to the individualized
18 nature of the proof regarding the amount of unpaid time for each driver took and that the amount
19 of unpaid time, if any, estimated by Plaintiff was far too high. After applying appropriate
20 discounts relating to Defendants’ arguments at the class certification stage and on the merits,
21 Plaintiff estimated the risk-adjusted value of the unpaid wage claims to be \$296,156.25 with a
22 50% discount at class cert and 50% discount on the merits for a total of approximately \$237,141.

23 **Failure to Reimburse Business Expenses**

24 Plaintiff further alleged that Defendants failed to reimburse Plaintiff and the Class despite
25 having a written policy requiring its employees to provide their own cell phones for work
26 purposes. Plaintiff estimated the maximum damages at \$2.5 per 16,687 workweeks for a total of
27 \$41,718. As discussed above, Defendants raised defenses to this claim that including that Class
28 Members do not need a cell phone for work. Consequently, Plaintiff assigned a 50% risk

adjustment to this claim for a total value of \$10,430.

Failure to Timely Pay Wages Upon Separation of Employment

Plaintiff also alleges that Defendants failed to timely pay all wages owed to the Class Members upon separation of employment. Based on this theory of liability, Plaintiff calculated the maximum waiting time penalties to be \$786,240 (84 former drivers x \$312 average flat daily rate x 30). However, Defendants argued that its defenses to the unpaid wages and Section 2802 also apply to the derivative Section 203 claim, that any underpayment of wages was not “willful” and/or that Defendants had a good faith defense to imposition of waiting time penalties. Defendants also argue Section 203 did not apply to the class because the class was not based in California. While Plaintiff was confident this claim is viable, Plaintiff gave a 50% discount at each stage for a risk-adjusted value of \$196,560.

In sum when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Wage Statements:	\$ 475,337
• Wages:	\$ 237,141
• 2802 Claims:	\$ 10,430
• Labor Code §§ 201 – 203 Claims:	<u>\$ 196,560</u>
• Total:	\$919,467

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 56% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the seven six figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

1 **E. PLAINTIFFS’ COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR**
2 **LITIGATION**

3 The view of the attorneys actively conducting the litigation is entitled to significant
4 weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D.
5 Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail,*
6 *Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of
7 counsel”) (internal quotation and citation omitted).

8 Plaintiffs’ Counsel is also highly experienced in Class/PAGA litigation, having been
9 named by the LA Times as one “Southern California Leading Lawyers” in the May 2023 issue of
10 Consumer Attorney’s of Southern California, being named as a “Super Lawyer” in employment
11 litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and
12 verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250
13 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among
14 other things. (Mankin Decl. ¶¶ 2-6). Plaintiffs’ counsel, operating at arm’s length, weighed the
15 strengths and risks of this case, and are of the view that this is a fair and reasonable settlement
16 considering the nature of the claims, realistic risk adjusted value, the complexities of the case,
17 state of the law, and uncertainties of class certification and litigation.

18 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

19 The proposed Class Notice should be approved, as it fully informs the Class Members of
20 the nature of the lawsuit and each Class Member’s rights under terms of the Settlement
21 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
22 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
23 of the proposed settlement.

24 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
25 the Class Notice to the last known address of all class members complies with all the
26 requirements of California Rule of Court 3.79(f) and 3.766(b). The contents of the proposed
27 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees,
28 litigation expenses, and the costs of administration; (3) details about the final fairness hearing

1 and how class members may elect to exclude themselves or make an objection; and (4) how class
2 members can obtain additional information. *See* Class Notice (Exhibit B to Mankin Decl.). In
3 addition, it will inform Class Members of their estimated settlement share.

4 The Court has wide discretion in approving the means of providing notice, so long as the
5 class representative “provide(s) meaningful notice in a form that should have a reasonable
6 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
7 (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be
8 disseminated directly to the class members by first class mail by the settlement administrator,
9 since Defendants have the last known addresses of all Class Members and the Settlement
10 Administrator will perform a skip trace and update those addresses for any class notices that are
11 returned and re-send the notice.

12 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
13 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
14 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
15 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
16 statement that the court will exclude the member from the class if the member so requests by a
17 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
18 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
19 request exclusion; and (5) a statement that any member who does not request exclusion may, if
20 the member so desires, enter an appearance through counsel. The 30-day deadline to opt-out or
21 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
22 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
23 or she will automatically be sent a settlement check.

24 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
25 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

26 The fact that each class member who does not opt out of the Settlement shall be mailed a
27 check ensures that every Participating Class Member will be paid unless he or she affirmatively
28 acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which

1 means that no settlement funds will revert to Defendants. Instead, if any checks are not cashed
2 by the check cashing deadline, the funds will be transferred to the State Controller's Office
3 subject to approval of the Court. Such terms are favored by Courts and demonstrate that there
4 was no collusion between counsel for the parties and that the Settlement is fair and favorable to
5 the Class Members.

6 **H. THE ATTORNEY'S FEES AND COSTS ALLOCATION UNDER THE SETTLEMENT**
7 **AGREEMENT IS FAIR**

8 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement of
9 up to \$20,000 in litigation costs, along with attorneys' fees equal to one-third of the Settlement
10 Amount. The benchmark in California is to award fees of one-third of the common fund
11 settlement. *See, e.g., Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in
12 the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class action
13 litigation establishes a monetary fund for the benefit of the class members, the trial court may
14 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
15 created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee
16 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was "well within the range
17 of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v.*
18 *Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee
19 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.
20 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: "[f]ee
21 awards in class actions average around one-third of the recovery.").

22 Once the Court grants preliminary approval and Notice is disseminated, Plaintiffs'
23 counsel will submit a comprehensive request for attorneys' fees and costs with the motion for
24 final approval.

25 **I. THE CLASS REPRESENTATIVES' SERVICE AWARD REQUEST IS FAIR AND**
26 **APPROPRIATE**

27 The Settlement Agreement provides an incentive award payment of \$7,500 each to the
28 Class Representatives, which is reasonable given the large recovery Class Members will receive

1 on average, the broader release he is agreeing to, as well as the time and effort they devoted to
2 this case. Their efforts included providing factual background for the Class and PAGA
3 Complaint; providing documents and information about Defendants' compensation plan;
4 participating in phone calls to discuss litigation and settlement strategy; making themselves
5 available throughout the litigation to assist with analyzing the claims and defenses; helping Class
6 Counsel prepare for the mediation; and reviewing the settlement documents. The Class
7 Representatives also assumed significant risk in bringing this litigation—namely, had they lost,
8 they could have been ordered to pay Defendants' costs.

9 The requested service award falls within the range of incentive payments typically
10 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
11 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in
12 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
13 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
14 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
15 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
16 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
17 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D.
18 Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each
19 of the named Plaintiff is appropriate” in wage and hour settlement).

20 **VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT**
21 **ADMINISTRATOR**

22 Subject to the Court's approval, the parties stipulated to Phoenix Settlement
23 Administrators serving as the Settlement Administrator. Phoenix is experienced in administering
24 class action settlements and has provided a flat-fee proposal to administer this settlement for
25 \$6,500. (Mankin Decl. ¶ 27).

26 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

27 The last step in the approval process is the formal fairness hearing, whereby proponents
28 of the settlement may explain and describe its terms and conditions and offer argument in

support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 115 days after the Preliminary Approval Date, as follows:

April 5, 2024	Preliminary Approval (PA) hearing
April 29, 2024 (24 days after PA)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
May 29, 2024 (30 days after mailing Class Notice)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and application for award of attorneys' fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs' Motion for Final Approval of Settlement, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval of Settlement.
TBD (Approximately July 31, 2024 - 115 days after Preliminary Approval is granted)	Final Approval Hearing.

VIII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for preliminary approval of the settlement.

Dated: March 4, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Proposed Class

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On March 4, 2024, I caused to be served the foregoing document(s) described as follows:

**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER**

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

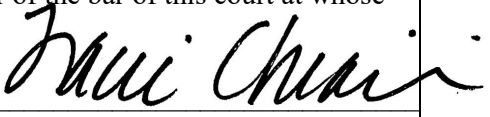
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 4, 2024, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

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