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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DEVIN TEAGUE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAPPY EXPRESS, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2203408

*[Assigned to Hon. Judge David Cohn, Dept. S26
for all purposes]*

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

Hearing

Date: May 19, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: February 14, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 19, 2023, at 10:00 a.m., or as soon thereafter as
3 the matter may be heard by the Honorable David Cohn in Department S26 of San Bernardino
4 County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff
5 Devin Teague, individually and on behalf of all others similarly situated, will and hereby does
6 move the Court for entry of an Order preliminarily approving the Parties' class action settlement,
7 including:

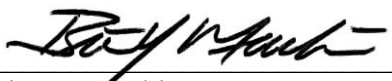
- 8 1. Certifying the class for purposes of settlement only;
- 9 2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
- 10 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 11 4. Preliminarily approving the class action settlement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

17 This motion is based upon this Memorandum of Points and Authorities in Support
18 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Kristina Bui Carlson); the
19 Class Action and PAGA Settlement Agreement and Release of Claims (the "Settlement
20 Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other
21 records, pleadings, and papers filed in this action; and upon such other evidence or argument as
22 may be presented to the Court at the hearing of this motion.

23
24 Dated: April 27, 2023

LAUBY, MANKIN & LAUBY LLP

25
26 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Devin Teague seeks preliminary approval of a \$200,000 wage-and-hour class
4 action settlement on behalf of approximately 58 current and former California resident truck
5 drivers who were classified as independent contractors and performed services for Defendants
6 Happy Express, Inc. (“Happy Express”) and Andrey Oganessian (Mr. Oganessian”) (collectively
7 referred to as “Defendants”) in California at any time from February 14, 2018, through January
8 30, 2023 (the “Class Period”).

9 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiff
10 Counsel’s application for a reasonable award of attorney’s fees not to exceed 1/3 of the
11 Settlement Amount, litigation expenses not to exceed \$20,000, Administrator Costs of
12 \$6,000.00, PAGA penalties of \$20,000 (with 75% to the LWDA and 25% to the Aggrieved
13 Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Devin Teague
14 (“Class Representative”). (S.A. ¶ 47, *et seq.*)

15 After all Court-approved deductions from the Settlement Amount, it is estimated that
16 \$79,833.33 will be available to pay the Class Members, as follows:

17

<i>Settlement Amount</i>	\$ 200,000.00
Attorneys’ Fees (1/3)	\$ 66,666.67
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 79,833.33

21

22 Assuming 58 Class Members, the average payment to each Class Member will be
23 approximately \$1,396.44 (\$79,833.33 / 58). However, the actual payment will be calculated on a
24 pro-rata basis according to the number of Weeks Worked by each Class Member during the
25 Class Period, with each Work Week having a value of approximately \$36.47 (\$79,833.33 / 2,189
26 estimated Work Weeks). In addition, approximately 27 Aggrieved Employees will receive a
27

28 ¹ The Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) is attached as Exhibit A to the Decl. of Brian Mankin (“Mankin Decl.”).

1 share of the \$5,000 PAGA Penalties (25% of the total \$20,000 allocation), calculated pro-rata
2 based on Weeks Worked during the PAGA Period. (S.A. ¶ 47(h)).

3 Because the settlement is fair and reasonable and was negotiated at arm's length by
4 experienced counsel and an experienced mediator following a sufficient exchange of information
5 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
6 requests that the Court enter an order preliminarily approving the settlement, conditionally
7 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
8 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix Class
9 Action Administration Solutions as the Administrator, and scheduling a hearing for final
10 approval.

11 **II. BACKGROUND**

12 **A. THE CLASS**

13 The Class is defined as follows:

14 All current and former California resident truck drivers who
15 performed services for Defendants in California and who were
16 classified as independent contractors at any time during the Class
Period (which is February 14, 2018, through January 30, 2023).
17 (S.A. ¶¶ 6, 10).

18 **B. PROCEDURAL HISTORY**

19 On February 9, 2022, Plaintiff submitted a letter to the Labor Workforce Development
20 Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the
21 "PAGA"), and simultaneously sent a letter to Defendants requesting the production of personnel
22 and timekeeping records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶
23 11).

24 On February 14, 2022, Plaintiff filed a class and PAGA complaint against Happy
25 Express, alleging: (1) failure to pay minimum wages, (2) failure to pay for rest and recovery
26 periods, (3) failure to reimburse for business expenses, (4) failure to timely pay final wages, (5)
27 failure to provide accurate itemized wage statements, (6) unfair and unlawful competition
28 pursuant to California Business and Professions Code §§ 17200 *et seq.*,

1 On April 21, 2022, Plaintiff filed a First Amended Complaint, the operative Complaint,
2 alleging (7) willful misclassification and (8)- (13) other related claims under PAGA. (S.A. ¶ 40).

3 Defendants retained counsel and immediately began to defend the case. Then, after early
4 discussions among counsel, the Parties agreed to attend private mediation. (Mankin Decl. ¶ 13).

5 In preparation for the mediation, the Parties informally exchanged documents and
6 information that allowed both sides to calculate the potential damages and evaluate potential risk,
7 including policies and procedures pertaining to each claim alleged, and statistics relating to the
8 number of current and former employees, number of shifts, pay periods worked and other things.
9 Defendants also provided their written policies and practices and a robust sampling of payroll
10 and timekeeping records for Class Members. This information enabled both parties to take a
11 deep dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
12 researched, and investigated the potential issues, including matters related to the calculation of
13 damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 14).

14 On August 16, 2022, Plaintiff and Defendants participated in mediation before Hon.
15 Michael Marcus (Ret.), a well-respected mediator. However, the matter did not resolve at the
16 conclusion of mediation. After months of extensive arms-length negotiations, the Parties reached
17 a global settlement on December 1, 2022. The matter resolved at mediation and the Parties
18 entered into the Settlement Agreement submitted herewith. The Parties now seek the Court's
19 preliminary approval of the Settlement. (Mankin Decl. ¶ 15).

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

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

22 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

23 The \$200,000 Settlement Amount² is non-reversionary and will be paid out to Class
24 Members without the need to submit a claim form or take any affirmative action. It includes (1)
25 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
26

27 ² The \$200,000 Settlement Amount is subject to increase if the "Escalator Clause" is triggered.
28 S.A. ¶¶ 17, 47(a). If this clause is triggered, other figures will also shift upward along with the
Settlement Amount, such as attorneys' fees (but this is still constrained to 1/3 of the Settlement
Amount) along with increased Administration Costs (*see* S.A. ¶ 47(g)).

1 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$6,000; (4) a
2 \$20,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
3 Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual
4 Settlement Amounts of the Participating Class Members. (S.A. ¶ 48 and subparts). Defendants
5 will separately pay their share of employer payroll taxes and withholdings. (S.A. ¶ 47(a)).

6 **B. NOTICE PROCEDURES**

7 The proposed Notice will be provided to the Class showing the estimated amounts that
8 each Class Member will receive, the number of Work Weeks credited as a Class Member and/or
9 Aggrieved Employee (*See Exhibit B to Mankin Decl.*). Within 14 calendar days after entry by
10 the Court of its Order of Preliminary Approval, Defendants shall provide the Administrator with
11 the “Class Data” consisting of Class Member names, addresses, phone numbers, Social Security
12 Numbers, and Weeks Worked during the Class/PAGA Period(s) (S.A. ¶¶ 7, 61).

13 Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the
14 numbers for each Class Member, populate the Notice, and send each Class Member the Notice
15 via first-class, United States mail. (S.A. ¶ 63).

16 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
17 perform a skip trace search and seek an address correction for the Class Member(s), and a second
18 Notice will be sent to any new or different address obtained. (S.A. ¶ 64).

19 **C. EXCLUSION AND OBJECTION PROCEDURES**

20 Class Members who do not timely Opt-Out of the Settlement will be deemed to
21 participate in the Settlement and shall become a Participating Class Member without having to
22 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
23 must submit a written request to the Administrator no later than 60 days after being mailed by
24 the Administrator (“Response Deadline”). (S.A. ¶¶ 24). Any Opt-Out request that is not
25 postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
26 case the Class Member’s exclusion or objection must be returned by the later of the original
27 Notice Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 64, 68).

28 ///

1 The Class Notice shall inform Class Members of their right to object to the Settlement.
2 Any Participating Class Member who wishes to object to the Settlement may submit a written
3 objection to the Administrator no later than the Response Deadline. (S.A. ¶ 68(c)).

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

5 The amount of each Class Member's Individual Class Payment is tied to the number of
6 Weeks Worked by each Class Member for Defendants during the Class Period. Individual Class
7 Payments are calculated by (a) dividing the Net Settlement Amount by the total number Weeks
8 Worked by all Participating Class Members during the Class Period, and (b) multiplying the
9 result by each Participating Class Member's Weeks Worked. (S.A. ¶ 47(c)).

10 Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment
11 calculated in the same way; thus, the \$5,000 PAGA Penalties allocated to the Aggrieved
12 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 47(h)).

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

17 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

18 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
19 Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class
20 Payments as follows: (a) By the later of October 1, 2023, or 10 days after the Effective Date,
21 Defendants shall fund 50% of the Settlement Amount; (b) By June 1, 2024, Defendants shall
22 fund the remaining 50% balance of the Settlement Amount (S.A. ¶ 69). Within 10 days after
23 receiving the funds, the Administrator shall issue payments to cover all court-approved
24 payments. (S.A. ¶ 74).

25 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 71). If a Class
26 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
27 the California State Controller in the name of the Class Member/Aggrieved Employee (*Id.*).
28

///

1 **F. TAX TREATMENT**

2 Since the Class Members performed contract services for Defendants as independent
3 contractors, rather than employees, and because Defendants fully dispute the allegations alleged
4 herein, the Parties agree that 100% will be allocated for contract compensation, interest, and
5 penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699 etc.) from which no
6 taxes will be withheld. (S.A. ¶ 47(d)). The Individual PAGA Payments will be classified
7 entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 47(h)).
8 Defendants will separately pay the share of employer payroll taxes on the sum allocated to
9 wages. (S.A. ¶ 47(a)).

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

11 In exchange for these payments, the Settlement Agreement at ¶ 33 defines the Released
12 Class Claims and provides that the Participating Class Members will release the Released Parties
13 of:

14 all class claims stated in the operative Complaint and those based upon
15 the facts in the Complaint, including: (a) failure to pay minimum wages,
16 (b) failure to provide and pay for rest and recovery periods, (c) failure to
17 reimburse business expenses, (d) failure to timely pay wages upon
18 separation of employment, (e) failure to provide accurate itemized wage
19 statements, (f) unfair and unlawful competition, and (g) all other claims
20 that reasonably could have arisen out of the allegations made and based on
21 the facts alleged in the operative Complaint.

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

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

28 The Settlement Agreement at ¶ 34 also defines the "Released PAGA Claims" as follows:

 all PAGA claims that Plaintiff alleged against the Released Parties,
 on behalf of himself and the State of California, based on the facts
 stated in the operative Complaint in the Action and in the LWDA
 notice letter, including all PAGA claims seeking civil penalties that
 premised upon (a) willful misclassification, (b) failure to pay

1 minimum wages, (c) failure to pay for rest and recovery periods, (d)
2 failure to reimburse business expenses, (e) failure to timely pay
3 wages each period, (f) failure to timely pay wages upon separation
4 of employment, (g) failure to provide accurate itemized wage
5 statements, and (h) all other claims for civil penalties recoverable
6 under PAGA based on the facts or claims alleged in the operative
7 Complaint.

8 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
9 that individual will still be subject to the Released PAGA Claims to the fullest extent permitted
10 by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 68).

11 **IV. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR**
12 **PURPOSES OF SETTLEMENT**

13 California Rule of Court 3.769(d) provides that the Court may make an order approving
14 certification of a provisional settlement class at the preliminary approval stage. It is well-
15 established that trial courts should use a “lesser standard of scrutiny” for determining the
16 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
17 *Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
18 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved
19 short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
20 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
21 certification, a district court need not inquire whether the case, if tried, would present intractable
22 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
23 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
24 as defined above, under Code of Civil Procedure § 382.

25 **A. ASCERTAINABILITY AND NUMEROSITY**

26 In determining whether a class is ascertainable, the court considers “(1) the class
27 definition, (2) the size of the class, and (3) the means available for identifying the class
28 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
class is ascertainable if the class members can be objectively identified and given notice of the

1 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
2 are approximately 58 Class Members that are easily identifiable and fall within the defined
3 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

4 **B. WELL-DEFINED COMMUNITY OF INTEREST**

5 *1. Commonality*

6 To justify certification, the class proponent must show that questions of law or fact
7 common to the class predominate over the questions affecting the individual members. *Arenas v.*
8 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
9 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
10 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
11 continue, they agree to class certification for the purposes of this settlement only.

12 *2. Typicality*

13 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
14 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*
15 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
16 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
17 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
18 Defendant’s pay policies, rest break practices, wage statements, and the provisions governing the
19 timely and complete payment of wages, which are at the core of the lawsuit.

20 *3. Adequacy of Representation*

21 The proposed class representative must establish that he or she will adequately represent
22 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
23 546. Specifically, Plaintiff is adequate to represent the class because he was employed by
24 Defendants during the Class Period, experienced the same wage and hour practices as the rest of
25 the Class, understood his duties as a Class Representative, has been willing to undergo the risks
26 of litigation, and has no conflict of interest.

27 Adequacy may be established by the fact that counsel are experienced practitioners. See
28 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)

244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6).

4. Superiority

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

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

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

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

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

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177

1 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
2 after determining that it is “fair, adequate and reasonable,” considering factors such as the
3 “risk, expense, [and] complexity” of continued litigation) (citations omitted). The Court enjoys
4 broad discretion in making its fairness determination, and should consider factors including, but
5 not limited to: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration
6 of further litigation, the risk of maintaining class action status through trial, the amount offered
7 in settlement, the extent of discovery completed and the stage of the proceedings, the experience
8 and views of counsel . . . and the reaction of the class members to the proposed settlement.”
9 *Dunk, supra* (detailing non-exhaustive list of factors for court’s consideration at final approval).

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

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

28 ///

1 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
2 **NEGOTIATIONS**

3 The settlement was the product of extensive arm's length negotiations between counsel
4 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
5 professional, the settlement negotiations were adversarial and non-collusive in nature. The
6 settlement reached is the product of substantial effort by the parties and their counsel. Although
7 Plaintiff and his counsel believed that there was a possibility of certifying the claims, they
8 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
9 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
10 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
11 prevailed on any of the defenses, the employees may not have received any monetary recovery.

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

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

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

19 To evaluate a settlement, the parties must provide the trial court with "basic information
20 about the nature and magnitude of the claims in question and the basis for concluding that the
21 consideration being paid for the release of those claims represents a reasonable compromise."

22 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

23 However, a settlement is not judged against what might have been recovered had a
24 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
25 to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 250 ("Compromise is inherent and
26 necessary in [settlement] ... even if the relief afforded by the proposed settlement is substantially
27 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
28 settlement because the public interest may indeed be served by a voluntary settlement in which

1 each side gives ground in the interest of avoiding litigation.”)

2 Here, Defendants raised significant legal and factual defenses that weigh in favor of the
3 reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff’s
4 claims, Defendants strongly disputed that Plaintiff could obtain class certification, arguing a lack
5 of commonality of the legal claims and injuries. Defendants further argued that it complied with
6 the applicable law and that any purported deviations therefrom were individualized in nature,
7 thereby limiting Plaintiff’s ability to certify the class. While Plaintiff asserts that this is a suitable
8 case for certification, he realizes that there is always a significant risk associated with class
9 certification proceedings, which could limit the claims that he could pursue on a class basis.

10 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
11 the best practicable recovery for the Class. While the total Settlement Amount is, of course, a
12 compromise figure, the potential risks and opportunities of both parties were effectively weighed
13 and considered by the parties, resulting in a fair and equitable settlement.

14 Based upon data obtained through informal discovery, Plaintiff’s counsel estimated the
15 following data through mediation: (1) 58 Class Members, (2) 21 *former* Class Members for
16 purposes of Labor Code § 203, (3) 2,189 workweeks, and (4) approximately 899 workweeks
17 during the PAGA Period. (Mankin Decl. ¶ 17).

18 Here, there were two categories of claims alleged by Plaintiff: (1) unpaid wage claims
19 under various theories and (2) derivative claims for waiting time and wage statement penalties
20 due to the other alleged violations. (Mankin Decl. ¶ 18).

21 As to the unpaid wage claims, Plaintiff alleged three theories of liability. Defendants
22 paid Class Members on a “per-mile” driven basis. Therefore, Plaintiff alleged that Defendants
23 failed to pay all required minimum and overtime wages due to a practice that required Class
24 Members to complete non-driving tasks (*e.g.*, pre-trip and post-trip inspections, fueling, going
25 through truck scales, detention time) without any compensation for these tasks. But Defendants
26 vehemently opposed these unpaid wage claims on the merits and as to the propriety of class
27 certification. Due to the defenses and arguments raised, Plaintiff assigned a 20% risk for the
28 unpaid wage claim at the class certification stage and an additional 20% risk on the merits. In

1 sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as \$43,344.
2 (Mankin Decl. ¶ 19).

3 Plaintiff alleged claims for waiting time penalties and wage statement violations. But
4 these claims were entirely derivative of the claims above, meaning that they only had merit if the
5 claims for unpaid wages were successful. The maximum values for these claims were as
6 follows: (1) \$151,200 for waiting time penalties [21 former employees x \$240 average daily pay
7 x 30 days], and (2) \$88,550 for wage statement violations [899 wage statements at the \$50/\$100
8 formula under § 226(e)]. (Mankin Decl. ¶ 20).

9 But Defendants raised a variety of defenses to these derivative claims that impacted the
10 valuation. Namely, Defendants argued that the wage statements did not violate Labor Code §
11 226 and, even if there was a "technical" violation, Plaintiff would be unable to prove the required
12 "knowing and intentional" and "injury" elements. Based on these facts and defenses, Plaintiff
13 placed a nominal 20% risk at class certification (mirroring the claims on which the wage
14 statement claim was based) and estimated another 20% risk the merits, leading to a risk-adjusted
15 value of \$56,672 for the wage statement claims. (Mankin Decl. ¶ 21).

16 Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for the
17 fact that this claim was derivative of the unpaid wage claims and, if those claims failed at
18 certification or on the merits, there would be no waiting time penalties owed, so the same risks
19 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
20 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
21 violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here,
22 Defendant argued there was no "willful" violation as they were inadvertent and unintentional.
23 As a result of this analysis, Plaintiff's counsel applied a 20% risk at class certification and a 20%
24 risk on the merits, leading to a risk-adjusted value of \$74,088 (Mankin Decl. ¶ 22).

25 Plaintiff also alleged willful misclassification claims against Defendants. Given the total
26 number of Class Members that were classified as independent contractors, despite the allegations
27 that the Class members drove Defendants' trucks and were controlled by Defendants, Plaintiff's
28 counsel estimated a maximum potential value for these claims of \$270,000 (27 misclassified

truck drivers multiplied by \$10,000 as a penalty under LC § 226.8(c)). However, Plaintiff's counsel applied a 20% risk on the merits. (Mankin Decl. ¶ 23).

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

•	Unpaid Wage Claims	\$	49,536
•	Wage Statement Claims	\$	56,672
•	Waiting Time Penalty Claims	\$	96,768
•	Willful Misclassification	\$	<u>216,000</u>
•	Total Risk Adjusted Penalties and Damages	\$	418,976

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 47.7% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the 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.

E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must take into account “the experience and view of counsel”).

Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250 million for its clients, having tried

1 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
2 6; Carlson Decl. ¶¶ 3-6). Plaintiff's counsel, operating at arm's length, weighed the strengths
3 and risks of this case, and are of the view that this is a fair and reasonable settlement considering
4 the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the
5 law, and uncertainties of class certification and litigation.

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

7 The proposed Notice should be approved, as it fully informs the Class Members of the
8 nature of the lawsuit and each Class Member's rights under terms of the Settlement Agreement
9 and applicable law. The manner in which the Class Notice shall be disseminated, as outlined
10 above, shall ensure that all or nearly all of the Class Members shall be properly notified of the
11 proposed settlement.

12 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
13 last known address of all class members complies with all the requirements of Cal. Rule of Court
14 3.769(f) and 3.766(b). The contents of the proposed Notice includes (1) the material terms of the
15 settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration;
16 (3) details about the final fairness hearing and how class members may elect to exclude
17 themselves or make an objection; and (4) how class members can obtain additional information.
18 See Class Notice (Exhibit B to Mankin Decl.). In addition, it will inform Class Members of their
19 estimated Individual Class Payment and Individual PAGA Payment.

20 The Court has wide discretion in approving the means of providing notice, so long as the
21 class representative "provide(s) meaningful notice in a form that should have a reasonable
22 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
23 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
24 disseminated directly to the class members by first class mail by the Administrator, since
25 Defendants have the last known addresses of all class members and the Administrator will
26 perform a skip trace and update those addresses for any class notices that are returned and re-
27 send the notice.

28 ///

1 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
2 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
3 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
4 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
5 statement that the court will exclude the member from the class if the member so requests by a
6 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
7 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
8 request exclusion; and (5) a statement that any member who does not request exclusion may, if
9 the member so desires, enter an appearance through counsel. The 45-day deadline to opt-out or
10 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
11 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
12 or she will automatically be sent a settlement check.

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

15 The fact that each member who does not opt out of the Settlement shall be mailed a check
16 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
17 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
18 settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline,
19 the funds will be transferred to the State Controller’s Office subject to approval of the Court.
20 Such terms are favored by Courts and demonstrate that there was no collusion between counsel
21 for the parties and that the Settlement is fair and favorable to the Class Members.

22 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR**

23 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
24 of up to \$20,000 in litigation costs, along with attorneys’ fees equal to one-third of the
25 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
26 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
27 action litigation establishes a monetary fund for the benefit of the class members, the trial court
28 may determine the amount of a reasonable fee by choosing an appropriate percentage of the

1 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
2 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was “well
3 within the range of percentages which courts have upheld as reasonable in other class action
4 lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at
5 *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods,*
6 *Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common
7 fund, noting: “[f]ee awards in class actions average around one-third of the recovery.”).

8 Once the Court grants preliminary approval and Notice is disseminated, Plaintiff’s
9 counsel will submit a comprehensive request for attorneys’ fees and costs with final approval.

10 **I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

11 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
12 Representative, which is reasonable given the large recovery Class Members will receive on
13 average, as well as the time and effort he devoted to this case. His efforts included providing
14 factual background for the Class and PAGA complaint; providing documents and information
15 about Defendants’ compensation plan; participating in phone calls to discuss litigation and
16 settlement strategy; making himself available throughout the litigation to assist with analyzing
17 the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
18 settlement documents. The Class Representative also assumed significant risk in bringing this
19 litigation—namely, had he lost, she could have been ordered to pay Defendants’ costs.

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

Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement)

VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Phoenix Class Action Administration Solutions (“Phoenix”) serving as the Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$6,000. (Mankin Decl. ¶ 38; Exhibit D to Mankin Decl. [Administrator’s bid]).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents 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 120 days after the Preliminary Approval Date, as follows:

May 19, 2023	Preliminary Approval (PA) hearing
June 12, 2023 <i>24 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice to all Class Members.
June 19, 2023 <i>30 days after mailing Notice</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
September 18, 2023 - <i>Approx. 120 days after PA</i>	Final Approval Hearing.

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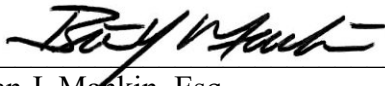
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1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the
3 motion for preliminary approval of the settlement.

4 Dated: April 27, 2023

LAUBY, MANKIN & LAUBY LLP

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6 BY: 
7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff and the Class
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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 April 27, 2023, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED 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 April 27, 2023, 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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