Mark R. Thierman, Cal SB# 72913
Joshua D. Buck, Cal SB# 258325
Leah L. Jones, Cal SB#276448
THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89501
(775) 284-1500
mark@thiermanbuck.com
josh@thiermanbuck.com
leah@thiermanbuck.com

James B. Zouras (admitted p*ro hac vice*)
STEPHAN ZOURAS, LLC
222 W. Adams Street, Suite 2020
Chicago, IL 60606
(312) 233-1550
jzouras@stephanzouras.com

David J. Cohen (admitted *pro hac vice*)
STEPHAN ZOURAS, LLC
604 Spruce Street
Philadelphia, PA 19106
(215) 873-4836
dcohen@stephanzouras.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

SPYNSIR TUCKER, for herself, all other similarly-situated individuals, and the general public, Plaintiffs, v. ZUM SF, INC., ZUM SERVICES, INC., RITU NARAYAN, ABHISHEK GARG, AND VIVEK GARG, Defendants.	Case No. CGC-22-598935 **PLAINTIFF'S REVISED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, WITH MEMORANDUM IN SUPPORT** Complaint Filed: March 29, 2022 Amended Complaint Filed: January 25, 2025 Trial Date: None Set

PLEASE TAKE NOTICE THAT, on June 18, 2025 at 1:30 P.M., Spynsir Tucker ("Plaintiff"), for herself and all others similarly situated, and Zum SF, Inc., Zum Services, Inc., Ritu Narayan, Abhishek Garg, and Vivek Garg ("Defendants") (collectively, "the Parties"), will move the Honorable Ethan P. Schulman, pursuant to California Rule of Court 3.769, to enter their proposed Order: (1) granting preliminary approval of the Parties' proposed class action and PAGA settlement; (2) conditionally certifying the proposed Class for settlement purposes only; (3) approving the Parties' proposed Class Notice and authorizing the Parties and the Administrator to cause its dissemination to the Class members by mail and e-mail; (4) approving the Parties' proposed deadlines for the notice and settlement administration process; and (5) scheduling a final settlement approval hearing.

This Motion is based on this Notice of Motion, the attached Memorandum and all exhibits thereto, the other pleadings filed in this action, and such other evidence as the Court may receive at the hearing on this Motion or otherwise.

Respectfully submitted,

Dated: June 9, 2025

By: *David J. Cohen*

David J. Cohen, Esq.
STEPHAN ZOURAS, LLC
604 Spruce Street
Philadelphia, PA 19106
(215) 873-4836
dcohen@stephanzouras.com

TABLE OF CONTENTS

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

TABLE OF AUTHORITIES

CASES

STATUTES

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

Pursuant to California Rule of Court 3.769, Plaintiff respectfully asks this Court to: (1) grant preliminary approval of the proposed class action and PAGA settlement; (2) conditionally certify the proposed Class for settlement purposes only; (3) approve the proposed Class Notice and authorize the Administrator to disseminate it to the Class members by mail and e-mail; (4) approve the proposed deadlines for the settlement administration process; and (5) schedule a final settlement approval hearing. Subject to Court approval, the Parties have agreed to a Gross Settlement Amount of $2,500,000.00.[1] Agreement § 1.15 (Exhibit A). The Gross Settlement Amount includes:

a. a Class Representative Enhancement Payment of up to $20,000.00 in recognition of Named Plaintiff's contribution and the risks she assumed, and in return for a general release;

b. Settlement Administration Costs not to exceed $18,975.00;

c. a Class Counsel Award that includes an attorneys' fee award of up to thirty-five percent (35%) of the Gross Settlement Amount, or $875,000.00, plus reimbursement of their out-of-pocket litigation costs, estimated at $28,000.00;

d. a PAGA Penalty Amount of $250,000.00 (10% of the Gross Settlement Amount), allocated 75% ($187,500.00) to the LWDA Payment and 25% ($62,500.00) to the PAGA Group; and

e. the remainder, approximately $1,308,025.00, (the "Net Settlement Fund) to provide payments to approximately 1,300 Class members.

This Settlement will resolve all claims that were alleged, or reasonably could have been alleged, by Plaintiff and all Class Members based on the facts in the Complaint, First Amended Complaint, and Plaintiff's PAGA letters to the LWDA for all individuals who do not seek exclusion from the Settlement. Plaintiff also seeks provisional certification of a Class defined as "All individuals employed by Zum SF, Inc. as drivers in the State of California at any time between March 29, 2018 and the date of preliminary approval," appointment of Plaintiff as Class

[1] This Motion incorporates the definitions from the Parties' Agreement.

Representative, Stephan Zouras, LLC and Thierman Buck, LLP as Class Counsel, and Phoenix Settlement Administrators ("Phoenix") as Settlement Administrator, and approval of certain proposed case deadlines.

I. PROCEDURAL HISTORY AND MEDIATION

Before initiating this Action, Plaintiff's counsel conducted a thorough investigation into the merits of her potential claims and defenses and researched the underlying merits of the putative Class members' claims, damages, and likelihood of class treatment. Declaration of David J. Cohen, ¶7 ("Cohen Dec.") (Exhibit F).

On March 29, 2022, Plaintiff initiated this action by filing a Class Action Complaint in the Superior Court for San Francisco County seeking unpaid wages, damages, penalties, attorneys' fees, costs, and interest against Defendants for their California drivers ("the Action"). *Id.* at ¶¶8-9. On January 30, 2025, Plaintiff filed a First Amended Complaint, adding additional claims. In sum, Plaintiff alleged that Defendants: (i) required drivers to engage in work-related activities off the clock and failed to pay drivers for this work, including overtime wages; (ii) failed to provide drivers meal or rest periods or to pay premiums for missed meal or rest periods; (iii) failed to record and pay sick leave; (iv) otherwise failed to pay wages for all time worked; (v) represented that video cameras installed in vehicles only worked when the engine was running, giving drivers an expectation of privacy during breaks despite causing these cameras to record and otherwise violated drivers' privacy rights; (vi) failed to timely pay wages during employment and upon termination; (vii) failed to provide accurate wage statements and (viii) failed to reimburse business expenses. Cohen Dec. at ¶10 (Exhibit F).

On June 17, 2022, Defendants filed an Answer denying Plaintiff's allegations, denying Plaintiff's claims could be maintained on a class or representative basis, and denying Plaintiff's

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

entitlement to any form of damages or relief. *Id*. at ¶11. Defendants' Answer also pled 38 affirmative defenses challenging Plaintiff's claims. *Id*.

From September 2022 to December 2023, the Parties engaged in discovery that included document requests, interrogatories, deficiency communications, conferrals, and productions. Defendants produced extensive documents and information, including: time and pay data, relevant policies and procedures, job descriptions, employee handbooks, collective bargaining agreements ("CBAs"), training materials, route summaries, employee totals, and Plaintiff's personnel file. Cohen Dec. at ¶12 (Exhibit F).

On February 9, 2024, Defendants filed a Summary Judgment Motion with a 41-paragraph statement of undisputed material facts. *Id*. at ¶13. Defendants argued Plaintiff's claims are subject to "complete preemption" under Labor Management Relations Act ("LMRA") because the Court would need to interpret the terms of CBAs that covered the conditions and terms of their drivers' work, including hours, pay, breaks, and the use of technology. *Id.*

On April 19, 2024, Plaintiff filed a Summary Judgment Opposition, answered Defendants' statement of undisputed material facts, and provided an additional, 77-paragraph statement of undisputed material facts. *Id*. at ¶14. Plaintiff argued the LMRA does not preempt her claims because they arise from state law, so would not require interpretation of Defendants' CBA, among other things. *Id.*

After Defendants filed their Summary Judgment Reply on May 10, 2024, the Parties began to explore settlement. *Id.* at ¶15. On May 23, 2024, the Parties filed a stipulation to continue the hearing date on the Summary Judgment Motion given their intention to pursue mediation. *Id.* at ¶16. Thereafter, the Parties retained Jill Sperber, Esq., a well-respected mediator with significant experience in wage-and-hour class actions. *Id*.

From May to August 2024, the Parties engaged in additional discovery. *Id.* at ¶17.

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

Plaintiff used this and earlier discovery to evaluate the strengths and weaknesses of her claims and Defendants' defenses, assess her ability to secure class certification, prove liability and damages, and calculate a "best case scenario" value for settlement using the following variables:

a. 2 straight-time hours per week / 2.5 overtime hours per week;
b. $40.00 average straight-time rate / $60.00 average overtime rate;
c. 30 weeks average employment duration; and
d. Approximately 1,300 California drivers.

<u>2 straight-time hours per week x $40.00 per hour x 30 weeks x 1,300 people = $3,120,000.00</u>

<u>2.5 overtime hours per week x $60.00 per hour x 30 weeks x 1,300 people = $5,850,000.00</u>

Plaintiff's best case scenario case value = $8,970,000.00

Cohen Dec. at ¶¶18-19 (Exhibit F).

On July 29, 2024, the Parties participated in an all-day mediation with Jill Sperber. *Id.* at ¶20. During the mediation, Defendants presented an array of arguments against Plaintiff's claims, theories, and damage calculations. *Id.* Throughout the mediation, the Parties also discussed issues associated with Plaintiff's ability to secure and maintain class certification, and the risks associated with proving liability and damages for her complex, class claims. *Id*. at ¶¶20-21. The Parties did not reach a settlement during the mediation. *Id.* at ¶22. However, based on their assessment that real progress had been made, they agreed to engage in continued negotiations facilitated by mediator Sperber. *Id.* On September 3, 2024, the Parties signed a Memorandum of Understanding commemorating the material terms of their settlement. *Id.* at ¶23. The Parties spent the next several months negotiating a long-form Settlement Agreement they signed on January 23, 2025. *Id.* at ¶24. *See* Agreement (Exhibit A).

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

II. THE PROPOSED SETTLEMENT

The Agreement defines the Settlement Class as: "All individuals employed by Zum SF, Inc. as drivers in the State of California at any time between March 29, 2018, and the date of preliminary approval." Cohen Dec. at ¶25; Agreement, §1.1 (Exhibit A).

The Agreement requires a gross, non-reversionary settlement payment of $2,500,000.00 to cover the Class Representative Enhancement Payment, all Settlement Administration Costs, any Class Counsel Award, the PAGA Penalty Amount, and all payments to Settlement Class Members. Cohen Dec. at ¶26 (Exhibit F).

A. Class Representative Enhancement Payment

Plaintiff may seek a Class Representative Enhancement Payment of up to $20,000.00. Agreement at §2.3 (Exhibit A). This amount is fair and reasonable because of Plaintiff's efforts to support the Action and provide relief for her fellow drivers, among other things. Cohen Dec. at ¶27. Plaintiff will provide a Declaration with the Final Approval Motion that describes her efforts on behalf of the Class. Defendants have reserved all rights with respect to the request for the Class Representative Enhancement Payment. Agreement, §2.3 (Exhibit A).

B. Settlement Administration Costs

The Parties have agreed Phoenix should serve as Settlement Administrator. *Id.* at §1.2 (Exhibit A). Phoenix is a well-established class action settlement administrator with substantial wage-and-hour settlement administration experience and has provided a "not to exceed" quote of $18,975.00 to perform the services required for the proposed settlement. *Id.* at §4; Cohen Dec. at ¶28 (Exhibit F); Phoenix Administration Quote (Exhibit J).

C. Class Counsel Award

Stephan Zouras, LLC and Thierman Buck, LLP may seek an attorneys' fee of up to thirty-five percent (35%) of the Gross Settlement Amount, or $875,000.00, plus reimbursement of their

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

actual out-of-pocket litigation costs, estimated at $28,000.00 (together, the "Class Counsel Award"). Agreement at §2.2 (Exhibit A). The proposed Class Counsel Award is fair and reasonable in this action and will be supported by a lodestar cross-check at Final Approval. Cohen Dec. at ¶29 (Exhibit F). Defendants have reserved "all rights with respect to the request for payment of attorneys' fees and the request for reimbursement of litigation costs." Agreement, §2.2.

D. PAGA And LWDA Payments

Under the Agreement, $250,000.00 (10% of the Gross Settlement Amount), will be paid for the settlement, release, and discharge of all claims for which penalties under PAGA may be sought or could otherwise be available to Plaintiff and or any member of the PAGA Group (the "PAGA Penalty Amount"). Agreement, §1.24 (Exhibit A). The PAGA Penalty Amount will be allocated 75% ($187,500.00) to the LWDA (the "LWDA Payment") and 25% ($62,500.00) to the PAGA Group (the "PAGA Group Amount"). *Id.* Cohen Dec. at ¶31 (Exhibit F). Plaintiff's counsel have submitted a copy of the Settlement Agreement to the LWDA as required under Lab. Code § 2609(s)(2). Cohen Dec. at ¶31. *See* LWDA Confirmation (Exhibit K).

E. Net Settlement Fund / Class Member Payments

If the Court approves the payments above, approximately $1,308,025.00 would go to the Class Members, providing an average claim value of approximately $1,055.00 per person, including approximately a $1,007.00 *pro rata* damages payment plus an approximately $48.00 *pro rata* PAGA Group Amount payment. Cohen Dec. at ¶32 (Exhibit F).[2] Each Class member will receive a *pro rata* share of the Net Settlement Fund based on their workweeks during the

[2] If the Court ultimately reduces the Class Counsel Award or Class Representative Enhancement Payment, the difference will be re-allocated to the Net Settlement Fund. *Id.* at ¶30.

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

Class Period, with the individual payments allocated 30% as wage damages and 70% as non-wage amounts, and Defendants paying all employer-side taxes due on the Class members' wage payments. *Id.*

Any Class member who does not seek exclusion from the settlement will be bound by all terms of the Agreement and release and the Court's final approval order. *Id.* at ¶33. All Class Members will be bound by the PAGA Release under the Final Approval Order and Judgment, including any Class Members who submit a valid Request for Exclusion.[3] *Id.*

III. THE PROPOSED SETTLEMENT IS PRESUMED TO BE FAIR

At the preliminary approval stage, a proposed settlement is entitled to "a presumption of fairness" where: (1) the settlement has been reached through arm's-length bargaining; (2) the parties have engaged in sufficient discovery; and (3) counsel is experienced in similar litigation. *Kullar,* 168 Cal.App.4th at 128. The Settlement in this Action satisfies these criteria.

A. The Settlement Has Been Reached Through Arm's-Length Bargaining

A settlement negotiated with "involvement of a neutral mediator" and "entered without self-dealing or other potential misconduct," is considered the result of arm's-length bargaining. *Kullar,* 168 Cal.App.4th at 129. The Parties engaged Ms. Sperber, a mediator with extensive experience in complex civil litigation, including wage-and-hour class actions, to facilitate their negotiations. Cohen Dec., ¶16 (Exhibit F). Ms. Sperber conducted a full-day mediation and presided over continued negotiations following the mediation. *Id.* at ¶20. The Parties did not engage in self-dealing, and the Gross Settlement Amount is non-reversionary, the Class members'

[3] Even if a Class member seeks exclusion from the Class, they will still be bound by the Settlement Agreement's release of PAGA Claims upon final approval of the Settlement Agreement and judgment. All Class Members will receive a *pro rata* share of the PAGA Group Amount, representing civil penalties enforced on behalf of the State of California. Class Notice, §17 (Exhibit D); *LaCour v. Marshalls of Ca,* 95 Cal. App. 5th 1172, 1194-1197 (2023).

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

individual payments will be calculated on a *pro rata* basis, Defendants will pay all employer-side taxes due on the Wage Portion payments, and the release is appropriately tailored to the claims alleged. *Id.* at ¶¶26, 31-32.

B. The Parties Engaged In Sufficient Investigation And Discovery

To qualify for a presumption of fairness, a settlement must have been negotiated after "sufficient investigation and discovery to allow counsel or the court to act intelligently." *Kullar,* 168 Cal.App.4th at 128. Before filing this Action, Plaintiff's counsel conducted a thorough investigation. Cohen Dec. at ¶7 (Exhibit F). After filing the Complaint, the Parties spent fifteen months engaged in extensive discovery. *Id.* at ¶12. After this, the Parties spent three months briefing Defendants' Summary Judgment Motion, which included an-depth analysis of the facts both supporting and challenging Plaintiff's claims, among other things. *Id.* at ¶¶13-15. Because the record suggests the Parties have engaged in sufficient investigation and discovery to inform their settlement, the Parties are entitled to a presumption of fairness.

C. Counsel Are Experienced In Similar Litigation

The experience of counsel is a key consideration is assessing the fairness of a settlement, as it informs their ability to understand the key factual and legal issues, assess their client's position, represent their interests, and negotiate a reasonable compromise. *Kullar,* 168 Cal.App.4th at 128. In this Action, Plaintiff and the Class are represented by counsel with extensive experience in class actions, wage and hour claims, and privacy claims. Cohen Dec. at ¶¶3-6 (Exhibit F); SZ Resume (Exhibit H); Jones Dec. (Exhibit I). Plaintiff's attorneys have extensive experience litigating the claims involved in this Action, and used that experience to properly investigate facts, assess risks, and negotiate a reasonable settlement.

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

IV. THE PARTIES' PROPOSED SETTLEMENT IS REASONABLE

Class settlements require court approval to prevent fraud, collusion or unfairness to the class. *Amaro v. Anaheim Arena Mgmt.,* 69 Cal.App.5th 521, 534 (2021). The factors that inform the reasonableness of a class settlement include: (1) the strength of the plaintiffs' case, (2) the risk, expense, complexity and likely duration of further litigation, (3) the risk of maintaining class action status through trial, (4) the amount offered in settlement, and (5) the experience and views of counsel. *Kullar v. Foot Locker Retail, Inc.,* 168 Cal.App.4th 116, 127-128 (2008).

A. The Strength And Weakness Of Plaintiffs' Case Supports Approval

To win preliminary approval, the plaintiff must demonstrate the strengths and weaknesses of her claims support the proposed settlement. *Id.* at 129 (reversing approval where "[t]he record fails to establish in any meaningful way… what information they reviewed on which they based their assessment of the strength of the class members' claims").

1. Rest period / UCL claims

California law requires employers to provide a ten-minute rest period after four hours of work or pay their employees one hour of straight-time pay for each workday it does not provide a rest period. Cohen Dec. at ¶18 (Exhibit F). Plaintiff's evidence suggests some drivers did not take all required rest periods approximately two days per week due to delays associated with traffic, schools, students, or bus issues and used their rest period time to catch-up to their schedule. *Id*. at ¶18(a). Further, Plaintiff maintains that Defendants' time and pay records did not clearly show if or when drivers received rest periods. *Id.* As a result, Plaintiff attributed two hour's-worth of straight-time wages per week per driver to these claims. *Id.* Defendants' position is that they deny that their drivers were not permitted to or did not take all legally required breaks. *Id.* Further, Defendants' position is that they provide training to drivers about the policy providing rest breaks, permit these breaks to be taken, provide a system to report any rest breaks, and have

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

proof of payments made to Class Members for any missed rest breaks consistent with Defendants' policies. *Id.* Defendants also maintain that Plaintiff could not pursue or prove her rest period claims on a class-wide basis. *Id.*

2. Minimum wage / wage statement / overtime / UCL claims

California law requires employers to pay wages for all hours worked. *Id.* Plaintiff's evidence suggests that drivers spent approximately 15 minutes working before and after their scheduled daily routes. *Id.* at ¶18(b). Further, Plaintiff proffers that Defendants' systems and procedures did not clearly prevent this work or ensure it was all captured for payroll purposes. *Id.* As a result, Plaintiff attributed 2.5 hour's-worth of overtime wages per week per driver to these claims. *Id.* In response, Defendants strongly deny their drivers perform any unpaid work and specifically assert that drivers do not engage in any unpaid work before or after their scheduled shifts. Defendants maintain policies requiring all work to be completed on-the-clock, train drivers on these policies, and take the position that their records show drivers are paid for all the time they spend at the start and end of their shifts on all work-related actions. *Id.* Defendants argue that Plaintiff was paid for approximately 93 more hours than she actually worked between August 2021 and May 2023. *Id.* Defendants also take the position that such claims could not be tried or proven on a class-wide basis. *Id.*

3. CIPA / common law intrusion / invasion of privacy claims

Following discovery, Plaintiff attributed no specific settlement value to her CIPA, intrusion, or invasion of privacy claim under the California Constitution because these claims were not provable on a class-wide basis. *Id.* at ¶18(c). These claims present individual questions about whether all drivers received the same information about the recording technology, drivers' expectations of privacy, and if drivers' private activities were recorded. Moreover, Defendants' locations use different technology and different procedures concerning when and how recordings

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

were used. *Id.* Defendants also attribute no value to this claim because they provided extensive training to drivers about the recording devices on their vehicles, and believe that drivers were expressly told and knew that the visible cameras were recording their actions (as is standard in the industry), so they had no reasonable expectation of privacy. *Id.*

4. Separation wages claim

Following discovery, Plaintiff attributed no specific settlement value to her separation wages claim because Defendants' CBAs address the payment of separation wages and the Court would need to interpret these provisions, meaning this claim would likely be preempted by LMRA § 301. *Id*. at ¶18(d).

5. Meal period claim

Following discovery, Plaintiff attributed no specific settlement value to her meal period claim under California Labor Code § 512(a) and Wage Order No. 9 because this claim presented individual questions about whether drivers experienced, and were paid for, meal break work for this claim to be certified for class treatment. *Id*. at ¶18(e). Defendants also attribute no value to this claim because they provide extensive training to drivers about the policy providing meal breaks, routinely allow these breaks to be taken, provide a system to report any missed meal breaks, and have proof of payments made to Class members for missed meal breaks consistent with their meal break policy. *Id.*

6. Sick leave / business expense reimbursement claims

Following discovery, Plaintiff attributed no settlement value to her sick leave claim under California Labor Code §§ 246 and 247.5 or her business expense reimbursement claim under California Labor Code § 2802 and Wage Order No. 9 because these claims are not provable on a class-wide basis. *Id*. at ¶18(f). These claims present individual questions about whether drivers took sick leave or incurred reimbursable business expenses and, if so, whether the required

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

payments were properly made. *Id.* Defendants also attribute no value to these claims because they properly provide sick leave to the Class members and maintain lawful policies regarding sick leave and reimbursement of reasonable and necessary business expenses, which were rarely (if ever) incurred. *Id.*

B. The Risk, Expense, Complexity, And Likely Duration Of Further Litigation Support Preliminary Approval

For preliminary approval, a plaintiff must demonstrate the risk, expense, complexity, and likely duration of the litigation support the reasonableness of the proposed settlement. *Kullar,* 168 Cal.App.4th at 129 ("the court [] bears the responsibility to ensure that the recovery represents a reasonable compromise, given… the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims"). At mediation, the Parties discussed these considerations at length and agreed this litigation presented substantial risks, involved complex and expensive proof, would require substantial time and, even if Plaintiff prevailed, Defendants could pursue an appeal that would require additional effort, expense, time, and risk on both sides. Cohen Dec. at ¶¶20-21 (Exhibit F).

C. The Risk Of Obtaining And Maintaining Class Status Through Trial Supports Preliminary Approval

To win preliminary approval, the plaintiff must demonstrate the proposed settlement is reasonable in light of the risk of obtaining and maintaining class action status through trial. *Kullar,* 168 Cal.App.4th at 128.

Had the Parties not negotiated a settlement, Defendants' motion for summary judgment could have substantially limited Plaintiff's claims. For any claim not summarily adjudicated, Plaintiff intended to seek class certification, offering all available class-wide evidence of the policies, work, and records relating to these claims. Cohen Dec. at ¶¶18(a)-(b). At the class stage (and any trial), Defendants would have adamantly countered Plaintiff's proof with evidence of their lawful policies, the training they provide to ensure time is properly tracked, the systems they maintain that pays drivers properly, the payments they made to Class members (including guaranteed wages that were typically *above* the actual time Class members actually worked), and the differences between policies, practices, and systems in across different locations, among other things. *Id.* This conflicting evidence presented a tangible risk the Court would deny class certification. *Id*. at ¶¶18, 20-21, 34. Where Plaintiff faced significant risks associated with class certification and maintaining her claims on a class-wide basis through trial, her ability to negotiate an Agreement providing relief to approximately 1,300 drivers supports preliminary approval.

D. The Amount Offered In Settlement Supports Preliminary Approval

To obtain preliminary approval, the plaintiff must also demonstrate that the value of the proposed settlement is sufficient. *Kullar,* 168 Cal.App.4th at 130 ("The most important factor is the strength of the case…balanced against the settlement").

Plaintiff intended to prove at trial that Class members were owed up to 4.5 hours per week of unpaid wages. Cohen Dec. at ¶18 (Exhibit F). Based on discovery-informed calculations, the "best case scenario" value of this work was estimated at approximately $8,970,000.00. *Id.*[4] Viewed against the risks of proving liability, securing and maintaining class certification through trial, and proving class-wide damages, Plaintiff respectfully submits that the settlement obtained and the amount attributable to the Class for distribution, representing approximately 15% of Plaintiff's "best case scenario" value, is fair and reasonable. The distribution proposed in the Agreement would provide an average claim value of approximately $1,055.00 per person. *Id*. at ¶32. Securing such a significant recovery on highly-contested claims supports preliminary

[4] This calculation relies on assumptions including that all 1,300 Class members worked every week during the relevant period, worked 40 hours every week, missed two rest periods each week, worked 15 minutes before and after their shift every day, and were never paid for any of this work.

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

approval.

E. The Discovery Completed And Stage Of The Proceedings Support Preliminary Approval

To obtain preliminary approval, the parties must have undertaken adequate discovery to demonstrate their understanding of the claims and defenses such that they can negotiate an informed settlement. *See Kullar,* 168 Cal.App.4th at 132-133.

Here, the Parties engaged in extensive discovery of the facts relevant to Plaintiff's claims and Defendants' defenses. Cohen Dec. at ¶¶7, 12, 17-19, 21 (Exhibit F). These efforts enabled the Parties to develop a full understanding of the risks and inform their bargaining positions. The Parties also negotiated their settlement at an appropriate stage in this proceeding. This Action has been pending since early 2022. *Id*. at ¶¶7-8. The Parties entered into settlement discussions after extensive discovery and with a Summary Judgment Motion pending, meaning they needed to account for the risk of an adverse decision. *Id*. at ¶¶13-15, 21. Although this case has been pending long enough for the Parties to understand their positions, it is still at an early procedural stage, meaning substantial effort, expense, and time would be required to secure a final determination. *Id*. at ¶22. In short, the current procedural status of this Action demonstrates that both Parties had *bona fide* reasons to negotiate a settlement and avoid the significant effort, expense, and time that would have been required to reach a final resolution.

F. The Experience And Views Of Counsel Support Preliminary Approval

In deciding preliminary approval, courts typically consider the experience and views of counsel. *See Kullar,* 168 Cal.App.4th at 128. As discussed above, Plaintiff is represented by counsel with extensive experience. Cohen Dec. at ¶¶3-6 (Exhibit F); SZ Resume (Exhibit H); Jones Dec. (Exhibit I). Based on their experience and analysis, Plaintiff's counsel confidently recommend the proposed settlement as fair and reasonable considering: (1) the risk of an adverse

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

ruling on Defendants' Summary Judgment Motion and on class certification; (2) the risks inherent to Plaintiff's privacy claims; (3) the risks of proving class-wide liability and damages in the face of Defendants' steadfast denials of wrongdoing; and (4) the risk that, even if Plaintiff won certification, prevailed on the merits, and survived an appeal, her proof of damages could result in a judgment below the value of this settlement. *Id*. at ¶¶18, 21-22, 27, 34-35, 43.

V. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES

Plaintiff seeks certification pursuant to California Rule of Court 3.769(d) of a provisional settlement Class, defined as:

> All individuals employed by Zum SF, Inc. as drivers in the State of California at any time between March 29, 2018, and the date of preliminary approval (the "Settlement Class").

Cohen Dec. at ¶25 (Exhibit F). The Settlement Class merits certification for settlement purposes, because: (1) it is ascertainable and sufficiently numerous; (2) there is a well-defined community of interest; and (3) a class action settlement is a superior method of resolving this case. *Brinker Rest. Corp. v. Super. Ct.,* 53 Cal 4th. 1004, 1021 (2012).

A. The Settlement Class Is Ascertainable And Sufficiently Numerous

A class is ascertainable when it is defined "in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible." *Noel v. Thrifty Payless, Inc*. 7 Cal. 5th 955, 980 (2019). The numerosity requirement is satisfied where the proposed class is of such a size that "it is impracticable to bring them all before the court." Cal. Code Civ. Proc. § 382.

Based on information Defendant produced, the Settlement Class in this Action is expected to include about 1,300 members. Cohen Dec. at ¶36 (Exhibit F). The Settlement Class can be easily ascertained in this case by using Defendants' employment records to identify individuals who worked as drivers in California during the relevant time period. *Id*. at ¶37. *See Aguiar v.*

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

Cintas Corp. No. 2 144 Cal. App. 4th 121, 136 (2006). As a result, in this case, the number of participants is sufficient to meet the numerosity threshold, and the proposed Class definition is sufficiently clear, allows Class members to understand if they are included, and can be used to specify those bound by the judgement. *Noel*, 7 Cal. 5th at 987.

B. There Is A Well-Defined Community Of Interest

A "well-defined community of interest" exists when there are: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Fireside Bank v. Super. Ct.,* 40 Cal. 4th 1069, 1089 (2006). Common questions predominate where the legal theory of recovery is "likely to prove amenable to class treatment," such that the resolution of claims "in a single class proceeding would be both desirable and feasible." *Brinker*, 53 Cal. 4th at 1021-22. A challenge to an employer's common policies is typically considered "eminently suited for class treatment." *Brinker*, 53 Cal. 4th at 1034.

This case involves common factual and legal issues at the core of the unpaid wage allegations. Cohen Dec. at ¶¶ 10, 18-21, 38 (Exhibit F). Plaintiff alleges she and the Class members worked under common policies relating to rest breaks, overtime, timekeeping, and wage payments. *Id.* at ¶¶10, 18-21, 39. *See Uschold v. NSMG Shared Servs., LLC,* 333 F.R.D. 157, 172 (N.D. Cal. 2019) (preliminarily approving rest break settlement); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 625 (N.D. Cal. 2014) (preliminarily approving rest break/overtime settlement). Because Plaintiff's claims rest on alleged common policies, practices, and systems, they involve common questions of law and fact supporting a community of interest finding.

C. Named Plaintiff's Claims Are Typical Of The Settlement Class

Plaintiff's claims are typical of the Settlement Class. "The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Franchise Tax Bd. Cases,* 25 Cal. App. 5th 369, 395 (2018).

Here, Plaintiff performed the same job duties as other Class members, her rest period and overtime, timekeeping, and wage payment claims are based on the same facts, and she seeks to recover the same damages. Cohen Dec. at ¶8-10, 17-19, 41 (Exhibit F); Declaration of Spynsir Tucker, ¶4 ("Tucker Dec.") (Exhibit G). Therefore, Plaintiff's claims are typical of, and her interests are aligned with, those of the Class members. *Franchise Tax Bd. Cases.,* 25 Cal. App. 5th at 395; *Hanon v. Dataproducts Corp*. 976 F.2d 497, 508 (9th Cir. 1992) (typicality requirement ensures named plaintiff's interests align with the class).

D. Plaintiff And Her Counsel Have Provided Adequate Representation

The adequacy requirement serves to ensure there are no conflicts of interest between named plaintiffs and class members that go to the "very subject matter of the litigation." *J.P. Morgan & Co., Inc. v. Super. Ct*., 113 Cal. App. 4th 195, 212 (2003). A named plaintiff is an adequate class representative if her claim "is not inconsistent with the claims of … the class," and her attorneys are qualified. *Id.*; *McGhee v. Bank of Am*. 60 Cal. App. 3d 442, 450 (1976).

The Named Plaintiff is an adequate representative because she has actively participated in and supported this litigation, has no known conflicts of interest with the Class, and has claims consistent with those belonging to the Class. Cohen Dec. at ¶8-10, 17-19, 42 (Exhibit F); Tucker Dec. at ¶5 (Exhibit G). Likewise, Class Counsel are experienced in wage-and-hour class actions and have been appointed class counsel in numerous other wage-and-hour class actions. *Id*. at ¶¶3-5; SZ Resume (Exhibit H); Jones Dec. at ¶¶ 2-6 (Exhibit I).

E. A Class Action Is Superior To Other Available Litigation Methods

Class treatment is superior to the adjudication of individual claims when it eliminates the possibility of repetitious litigation and "provides small claimants with a method of obtaining

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

redress for claims which would otherwise be too small to warrant individual litigation." *Richmond v. Dart Industries, Inc*., 29 Cal.3d 462, 469 (1981). Each Settlement Class member's claim in this Action is relatively small, such that litigating these claims individually would not only consume disproportionate legal resources (assuming any experienced attorney would take on a small individual wage claim). Cohen Dec. at ¶43 (Exhibit F). If these individual claims were filed *en masse*, as opposed to collectively, they would consume disproportionate judicial resources and present a clear risk of inconsistent rulings. *Id. See Bufil v. Dollar Fin. Grp., Inc*., 162 Cal. App. 4th 1193, 1208 (2008). By comparison, resolving Plaintiff's claims on a class-wide basis creates obvious efficiencies and promotes consistency.

Courts do not apply as much scrutiny to the question of superiority when class certification is sought for settlement purposes only, as here, because the case will not proceed to trial, thereby avoiding case management issues related to trial. *Luckey v. Super. Ct.,* 228 Cal. App. 4th 81, 94 (2014). This Action is manageable on a class-wide basis for settlement purposes because the Parties have agreed and proposed that any individual variations in the value of Settlement Class members' claims should be managed by allocating the Net Settlement Fund on a *pro rata* basis. *See Sav-on Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th at 334 (2004) ("Individual issues do not render class certification inappropriate so long as such issues may effectively be managed").

VI. THE PROPOSED CLASS NOTICE MERITS APPROVAL

The California Supreme Court requires a class notice to fairly apprise class members about the terms of the proposed compromise and the options for dissenting class members with neutral language that expresses no opinion on the merits of the case or the amount of the settlement. *State of Calif. v. Levi Strauss and Co.,* 41 Cal.3d 460, 485 (1986) (a court should clearly indicate it has only determined there is probable cause to submit the settlement proposal to the class and hold a final fairness hearing).

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

The Parties' proposed Class Notice provides a neutral statement of the Class members' rights and remedies in this Action. *See* Class Notice (Exhibit D). This Class Notice, like other notices approved in this Court: (1) describes the Action and the claims; (2) defines the Class; (3) explains why the Notice has been provided; (4) summarizes the Class members' rights and options, including excluding themselves from, and objecting to, the settlement; (5) describes the proposed settlement; (6) describes the proposed payment to each Class member, including how it was calculated and how and when it will be provided; (7) describes the release to be provided in return for this payment; (8) identifies Plaintiffs' counsel and provides their contact information; (9) describes when and where the fairness hearing will occur; and (10) identifies the Settlement Administrator and provides its contact information. Class Notice (Exhibit D); Cohen Dec. at ¶44. The Parties respectfully submit the Class Notice is adequate, thorough, and merits approval.

VII. PROPOSED TIMELINE

The Parties respectfully ask the Court to set a case schedule in accordance with the chronology of events set forth in the Settlement Agreement:

A. Within 7 business days of the Court's preliminary approval Order Defendants will provide the Class List to the Settlement Administrator**;**

B. Within 14 business days of receiving the Class List, the Settlement Administrator will send the approved Class Notice by First-Class U.S. Mail and e-mail to all Class Members for whom Defendants have provided such addresses;

C. The Response Deadline will be 60 calendar days from the initial Class Notice mailing. For re-mailed Notices, the Response Deadline will be extended for an additional 15 calendar days for that Class member.

D. Class Members who want to object to the Agreement must submit a valid written Objection to the Settlement Administrator by the Response Deadline;

E. Class Members who want to opt-out of the Agreement must submit a valid written Exclusion Request by the Response Deadline;

F. Class Members who want to dispute their credited Workweeks must submit a valid written Workweek Dispute by the Response Deadline.

THIERMAN BUCK LLP
325 West Liberty Street
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

G. The Settlement Administrator will provide copies of all Class member submissions to counsel for the Parties weekly and will provide a Final Response Report within five days of the Response Deadline;

H. On [date], at [time], in [location], the Court will hold a Fairness Hearing to determine whether the Agreement should be finally approved as fair, reasonable, and adequate. Plaintiff's motion for final approval of the Settlement and all papers supporting the Class Counsel Award and Class Representative Enhancement Payment must be filed by ________, 2025. Any additional papers supporting final approval, including the Settlement Administrator declaration and any response to Objections to the Agreement, must be filed by ________, 2025.

VIII. CONCLUSION

Plaintiff respectfully asks the Court to enter her proposed Order: (1) granting preliminary approval of the Parties' proposed class action and PAGA settlement; (2) conditionally certifying the proposed Class for settlement purposes only; (3) approving the Parties' proposed Class Notice and authorizing the Parties and the Administrator to cause its dissemination to the Class members by mail and e-mail; (4) approving the Parties' proposed deadlines for the notice and settlement administration process; and (5) scheduling a final settlement approval hearing.

Respectfully submitted,

Dated: June 9, 2025 By: *David J. Cohen*

David J. Cohen, Esq.
STEPHAN ZOURAS, LLC
604 Spruce Street
Philadelphia, PA 19106
(215) 873-4836
dcohen@stephanzouras.com