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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

PEDRO HERNANDEZ and MARIO
ERAZO, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

RESTORATION HARDWARE, INC., a
Delaware Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: CIVDSB2211655
(Assigned to Hon. Jessica Morgan, Dept. S26)

CLASS ACTION

**PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing Date: June 12, 2024
Time: 8:30 a.m.
Department: S26

Complaint Filed: June 9, 2022

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

2 PLEASE TAKE NOTICE that on June 12, 2024 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department S26 of the above-captioned court located at 247 West 3rd
4 Street, San Bernardino, California 92415, Plaintiffs PEDRO HERNANDEZ and MARIO ERAZO
5 (“Plaintiffs”), individually and on behalf of a similarly situated class of individuals and aggrieved
6 employees, will and hereby do move this Court, pursuant to Code of Civil Procedure Section 382
7 and Rule 3.769(c) of the California Rules of Court to enter an Order to:

8 1. Preliminarily approve the proposed class action and PAGA settlement, as set forth
9 in the Class Action and PAGA Settlement Agreement and Release (“Settlement Agreement” or
10 “SA”), attached as **Exhibit 1** to the Declaration of Tatiana G. Avakian, which is submitted
11 concurrently in support of the Motion;

12 2. Preliminarily certify the Class, defined as: all drivers and helpers who were
13 cleared to deliver Restoration Hardware, Inc. (“RH”) merchandise on behalf of third-party
14 logistics providers (i.e., freight forwarders) in California at any time during the Class Period,
15 which is the period from August 8, 2020 through June 12, 2024, the date initially scheduled for
16 the hearing on Plaintiffs’ Motion for Preliminary Approval. (SA, §§ 2.5, 2.7);

17 3. Preliminarily appoint Plaintiffs Pedro Hernandez and Mario Erazo as the Class
18 Representatives for the Settlement Class Members, and as the PAGA Representatives for the
19 PAGA Group Members;

20 4. Preliminarily appoint Marlin & Saltzman, LLP and its attorneys Alan S. Lazar,
21 Cody R. Kennedy, Stephen P. O’Dell, and Tatiana G. Avakian, and The Hamideh Firm, P.C. and
22 its attorney Bassil A. Hamideh, as Class Counsel for the Settlement Class Members and the PAGA
23 Group Members;

24 5. Appoint Simpluris, Inc. (“Simpluris”) as the Settlement Administrator;

25 6. Approve as to form and content of the Notice of Settlement of Class Action (“Class
26 Notice”), attached as **Exhibit A** to the Settlement Agreement, and direct its distribution to the
27 Class and the PAGA Group Members;

28 7. Approve as to form and content of the Publication Notice Plan (“Publication

Notice”), attached as **Exhibit B** to the Settlement Agreement, and direct its distribution to all helpers within the Class and the PAGA Group Members; and

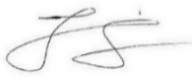
8. Set a hearing date, time, and place to conduct the Final Approval Hearing on Plaintiffs’ Motion for Final Approval of Class Action and PAGA of the Settlement, as well as Class Counsel’s Motion for Class Counsel’s Attorneys’ Fees and Costs, Class Representatives’ Service Payments, and Settlement Administration Costs.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement; (3) the Declarations of Alan S. Lazar, Cody R. Kennedy, Tatiana G. Avakian, Bassil A. Hamideh, Pedro Hernandez, Mario Erazo, and Eric Springer; (4) the Settlement Agreement (and Exhibits thereto, including, but not limited to, the Class Notice); (5) [Proposed] Order Granting Preliminary Approval of Class and PAGA Settlement; (6) the records, pleadings, and papers filed in this action; and (7) such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

Pursuant to Labor Code Section 2699(1)(2), a copy of the Settlement Agreement was e-filed with the LWDA on May 16, 2024. (Declaration of Tatiana G. Avakian (“Avakian Decl.”), ¶ 11, **Ex. 2**.)

DATED: May 16, 2024

MARLIN & SALTZMAN, LLP
THE HAMIDEH FIRM, P.C.

By: 

Alan S. Lazar, Esq.
Cody R. Kennedy, Esq.
Stephen P. O’Dell, Esq.
Tatiana G. Avakian, Esq.
Attorneys for Plaintiffs

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<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal. App. 4th 1380	35
<i>In re Pacific Enterprises Securities Litigation</i> (9th Cir. 1995) 47 F.3d 373	35
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs respectfully seek preliminary approval of a non-reversionary, “no claim form
4 required” class action and PAGA action settlement in this wage-and-hour class and representative
5 action. If approved, the Settlement will provide valuable monetary relief for approximately 976
6 former drivers and helpers who were cleared to deliver RH merchandise on behalf of third-party
7 logistics providers (i.e., freight forwarders) in California at any time during the Class Period.
8 Subject to Court approval, Defendant has agreed to settle this action by paying a non-reversionary
9 Gross Settlement Amount of **\$6,000,000**.

10 The relief offered by the Settlement is particularly impressive when viewed against the
11 difficulties encountered by plaintiffs pursuing wage and hour cases. The proposed settlement
12 affords Settlement Class Members and PAGA Group Members substantial monetary relief without
13 the expense, delay, and uncertainty of continued litigation. This is particularly true where, as here,
14 Defendant RH (“Defendant” or “RH”) sharply disputes the factual and legal contentions of all the
15 claims asserted. Absent settlement, the Parties would be required to litigate these claims as to
16 liability issues, which would be costly, time consuming to resolve, and would present substantial
17 risk as to both sides of the case.

18 The Parties negotiated the Settlement at arm’s-length following a full-day mediation with
19 highly respected mediator, Antonio Piazza. The Parties were able to reach a settlement following
20 a mediator’s proposal shortly following the conclusion of the full-day mediation. If approved, all
21 Class Members who have not opted out of the class portion of the Settlement, and all PAGA Group
22 Members, will have a check mailed to them after the Settlement becomes final without any need
23 to submit a claim form.

24 As detailed below, the proposed Settlement satisfies all criteria for preliminary approval.
25 Accordingly, Plaintiffs request that the Court grant this Motion, enter the proposed Preliminary
26 Approval Order, and set a date for the Final Approval Hearing.

27 ///

28 ///

II. BACKGROUND AND SUMMARY OF THE LITIGATION

A. Defendant

RH describes itself as a high-end furniture and home goods retailer, who transports goods to its customers through, among other means, services of third-party logistics providers (i.e., freight forwarders). (Avakian Decl., ¶ 13.)

B. Complaints and PAGA Notice

On June 9, 2022, Class Counsel filed a complaint against Defendant, alleging the following claims: (1) declaratory relief (Code of Civ. Proc., § 1060); (2) failure to pay minimum wages (Cal. Labor Code §§ 1194 and 1197 and Wage Order No. No. 9, § 4); (3) failure to pay overtime wages (Cal. Labor Code §§ 510, 1194 and 1198 and Wage Order No. No. 9, § 3); (4) failure to provide meal periods (Cal. Labor Code §§ 226.7, 512 and Wage Order No. 9, § 11); (5) failure to provide rest periods (Cal. Labor Code § 226.7 and Wage Order No. 9, § 12); (6) failure to pay all wages upon discharge (Cal. Labor Code §§ 200, 203); (7) failure to maintain adequate records (Cal. Labor Code § 1174 and Wage Order No. 9, § 7); (8) failure to reimburse for necessary business expenses (Cal. Labor Code § 2802); (9) unlawful deductions from wages; (10) failure to provide adequate wage statements (Cal. Labor Code §§ 226, 226.2, 226.3 and Wage Order No. 9, § 7); (11) engaging in unlawful, unfair, and deceptive business practices (Cal. Bus. & Prof. Code § 17200 *et seq.*); and (12) intentional misclassification (Cal. Labor Code § 226.8). (Avakian Decl., ¶ 14.) That same day, Class Counsel also submitted a “PAGA Notice” letter to the LWDA on behalf of Plaintiffs, with the intention to seek civil penalties pursuant to the Private Attorneys General Act (“PAGA”), Labor Code Section 2698, *et seq.* (*Ibid.*; see also **Ex. 3** to Avakian Decl.)

On May 16, 2024, pursuant to the terms of the Settlement, Plaintiffs submitted a stipulation for leave to file their First Amended Complaint, for the sole purpose of asserting a claim for civil penalties pursuant to PAGA. (Avakian Decl., ¶ 15.) Plaintiffs had previously attempted to file a First Amended Complaint on September 16, 2022, to assert a claim under PAGA. (*Ibid.*) On October 18, 2022, Defendant also attempted to file an Answer to Plaintiffs’ First Amended Complaint. (*Ibid.*) However, the Court rejected the filing of both documents, stating that permission for leave of court must be granted to file the First Amended Complaint. (*Ibid.*)

1 **C. Other Matters**

2 On November 27, 2017, plaintiffs Hernan Hernandez, Celso Zavala, Eusebio Baires,
3 Carlos Hernandez, and Danny Hernandez filed a putative class against Defendant RH and
4 HomeDeliveryLink, Inc. (“HDL”), in the matter of *Zavala, et al. v. Restoration Hardware, Inc.,*
5 *et al.*, Case No. CIVDS1723322, San Bernardino County Superior Court, alleging claims for: (1)
6 declaratory relief; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure
7 to provide meal periods; (5) failure to provide rest periods; (6) failure to pay all wages upon
8 discharge; (7) failure to maintain adequate records; (8) failure to reimburse for necessary business
9 expenses; (9) unlawful deductions from wages; (10) failure to provide adequate wage statements;
10 (11) engaging in unlawful, unfair, and deceptive business practices; (12) quantum merit/unjust
11 enrichment¹; and (13) intentional misclassification. (Avakian Decl., ¶ 16.) The relevant Class
12 Period in the *Zavala* matter is from November 27, 2013 to August 7, 2020, which is the date that
13 the Transportation Services Agreement (“TSA”) between RH and HDL (a third-party logistics
14 provider) ended. (*Ibid.*)

15 On August 17, 2017, plaintiff Joel Serrano filed a putative class action against Defendant
16 HomeDeliveryLink, Inc. (“HDL”) in the matter of *Serrano v. HomeDeliveryLink, Inc.*, Case No.
17 CIVDS1715974, San Bernardino County Superior Court, alleging claims for: (1) unfair business
18 practices; and (2) civil penalties under PAGA. Both claims were premised on the allegation that
19 HDL violated Labor Code section 3751(a) by allegedly deducting workers’ compensation
20 insurance coverage and/or administrative fees from the wages of putative class members. (Avakian
21 Decl., ¶ 17.) Following the filing of the *Zavala* action, a First Amended Complaint was filed in
22 *Serrano* on July 8, 2019, against HDL, but adding Labor Code and Wage Order claims for: (1)
23 misclassification as independent contractors; (2) failure to pay all wages; (3) failure to pay
24 reporting time pay; (4) failure to pay split shift pay; (5) failure to provide all meal periods; (6)
25 failure to authorize and permit all paid rest periods; (7) failure to fully reimburse work expenses;

26
27
28 ¹ On March 13, 2020, the Court granted Plaintiffs’ Request for Voluntary Dismissal of the Twelfth
Cause of Action, the claim for quantum merit/unjust enrichment. (Avakian Decl., ¶ 16, fn.1.)

(8) illegal wage deductions; (9) violations of Labor Code section 1174; (10) independent failure to timely furnish accurate itemized wage statements; (11) derivative failure to timely furnish accurate itemized wage statements; (12) derivative violations of Labor Code sections 201-202; and (13) independent violations of Labor Code sections 201-202. (*Id.*, ¶ 18.) On July 16, 2020, the Court deemed the *Zavala* action and the *Serrano* matter related. (*Id.*, ¶ 19.)

The *Zavala* and *Serrano* matters participated in the August 16, 2023 mediation, as well, and a global settlement was reached as to all three cases.

D. Discovery, Investigation, and Research

The Parties conducted significant investigation into the facts and law during the prosecution of this action before entering into the proposed Settlement. Although discovery was initially stayed by the Court's Initial Status Conference Order, the Parties agreed to engage in informal discovery to prepare for mediation. (Avakian Decl., ¶ 20.) After extensive meet and confer discussions with counsel for the Parties, Defendant produced extensive dispatch records detailing the delivery routes for the drivers. (*Ibid.*) Plaintiffs also had the benefit of the extensive written discovery, company policies, training documents, and other related policies, deposition testimony from RH PMK witnesses, and putative class members' deposition testimony from the *Zavala* matter, on which Plaintiffs relied in preparation for the mediation in this case. (*Ibid.*)

The aforementioned discovery was instrumental in assisting Plaintiffs' counsel to evaluate the underlying claims and applicable defenses, the legal issues, and other issues relevant to reaching a potential settlement. (Avakian Decl., ¶ 21.)

E. Mediation

The Parties agreed to mediate this matter before highly-esteemed mediator, Antonio Piazza, Esq. (Avakian Decl., ¶ 22.) The Parties attended a full-day mediation with Mr. Piazza on August 16, 2023 and, after extensive arm's-length negotiations, the Parties agreed to a mediator's proposal and reached the Settlement before the Court. (*Ibid.*)

The settlement reached was a global settlement for the present Action, as well as for the *Zavala* and *Serrano* matters, referenced above, for a total of \$15,000,000, which Class Counsel has apportioned based on their estimates of the number of workweeks in each case, as follows: (1)

1 present Action: \$6,000,000; (2) *Zavala*: \$7,650,000; and (3) *Serrano*: \$1,350,000. (Avakian Decl.,
2 ¶ 24.)

3 During the period of November 27, 2013 (i.e., the start of the Class Period in *Zavala*)
4 through the date of mediation (i.e., August 16, 2023), Plaintiffs estimate that the present Action
5 comprises approximately 40% of the total workweeks, while the *Zavala* and *Serrano* matters
6 comprise approximately 60% of the total workweeks (for RH deliveries). (Avakian Decl., ¶ 25.)
7 The Class Period in *Zavala* ends on August 7, 2020, as a result of the TSA between RH and HDL
8 ending on that date, the class period in *Serrano*, a case against HDL, only, begins on August 17,
9 2013 and continues through the date of Preliminary Approval or June 12, 2024, whichever is
10 earlier. (*Id.*, ¶ 26.) Of the 60% of total workweeks Class Counsel estimates are shared by *Zavala*
11 and *Serrano* (for the drivers performing RH deliveries), Class Counsel attributes approximately
12 15% to *Serrano*, to account for the continued class period in *Serrano* from August 17, 2013 to
13 November 26, 2013, and August 8, 2020 to Preliminary Approval or June 12, 2024, whichever is
14 earlier. (*Ibid.*)

15 F. Decision to Settle and Benefits of Settlement

16 Plaintiffs and their counsel believe that the claims asserted in the action have merit.
17 However, they also recognize and acknowledge the expense and delay of continued lengthy
18 proceedings necessary to prosecute the action against Defendant through trial and through appeals.
19 Plaintiffs' counsel have considered the uncertain outcome and the risk of any litigation, the risk of
20 continued litigation in complex actions such as this, as well as the difficulties and delays inherent
21 in such litigation. They are also mindful of the inherent problems of proof under, and possible
22 defenses to, the claims. Counsel believe that the Settlement confers substantial benefits upon each
23 of the Settlement Class Members and PAGA Group Members. Based on their own independent
24 investigation and evaluation, proposed Class Counsel, being experienced in this area of class action
25 and PAGA action litigation, have determined that the Settlement is in the best interests of the
26 Plaintiffs and the Settlement Class Members/PAGA Group Members.

27 In light of the risks discussed herein, and further detailed below in Section V(C), Plaintiffs
28 and their counsel concluded the recovery of \$6,000,000 is both reasonable and fair.

1 **III. SUMMARY OF THE SETTLEMENT**

2 The comprehensive terms of the Settlement are set forth in the Settlement Agreement,
3 attached to the Avakian Declaration as **Exhibit 1**.

4 **A. Settlement Class and PAGA Group Members Definitions**

5 The Settlement Class is defined as: all drivers and helpers who were cleared to deliver
6 Restoration Hardware merchandise on behalf of third-party logistics providers (i.e., freight
7 forwarders) in California at any time during the Class Period, which is the period from August 8,
8 2020 to and including June 12, 2024, the date initially scheduled for the hearing on Plaintiffs’
9 motion for Preliminary Approval. (SA, §§ 2.5, 2.7.)

10 The PAGA Group Members are defined as: Plaintiffs and all other drivers and helpers who
11 were cleared to deliver Restoration Hardware merchandise on behalf of third-party logistics
12 providers in California at any time during the PAGA Period, which is from June 9, 2021 to and
13 including June 12, 2024. (SA, §§ 2.39, 2.46.)

14 **B. Monetary Terms**

15 Defendants have agreed to pay a Gross Settlement Amount of \$6,000,000 (“GSA”) to settle
16 this action. (SA, § 2.23.) The GSA will be used to pay: (a) Class Settlement Awards, (b) PAGA
17 Settlement Amount (\$180,000, with 75% (i.e., \$135,000) payable to the LWDA, and 25% (i.e.,
18 \$45,000) to be distributed to the PAGA Group Members), (c) Withholdings and Taxes,
19 (d) Attorneys’ Fees (not to exceed 35% of the GSA, or \$2,100,000); (e) Attorneys’ Litigation
20 Expenses (not to exceed \$50,000), (e) Service Payments (totaling \$10,000), and (f) Settlement
21 Administration Costs (not to exceed \$24,623.00). (SA, §§ 2.23, 2.48, 2.66, 3.5-3.7.) The Parties
22 estimate the Net Settlement Sum as follows:

23	Gross Settlement Amount:	\$6,000,000.00
24	PAGA Settlement Amount	-\$180,000.00
25	Service Payments	-\$10,000.00
26	Settlement Administration Costs	-\$24,623.00
27	Attorneys’ Fees	-\$2,100,000.00
28	Attorneys’ Litigation Expenses	-\$50,000.00
	<u>Withholdings and Taxes</u>	<u>TBD</u>
	Net Settlement Sum	\$3,635,377.00

1 There are approximately 1,418 Class Members², resulting in an average net settlement
2 payment of approximately \$2,563.74 per Class Member. (Avakian Decl., ¶ 39-40.) There are also
3 approximately 1,066³ PAGA Group Members, resulting in an average net settlement payment of
4 approximately \$42.21 per PAGA Group Members (i.e., \$45,000 / 1,066.) (*Ibid.*)

5 **C. Class Settlement Awards**

6 Class Settlement Awards will be calculated and apportioned from the Net Settlement Sum
7 (made up of the Drivers Class Fund and Helpers Class Fund), as follows:

8 **Drivers Class Fund:** The Drivers Class Fund is half of the Net Settlement Sum (which
9 will be split evenly between the Drivers Class Fund and Helpers Class fund). The Drivers Class
10 Fund will be split proportionally among Drivers based on their individual Drivers Workweeks.
11 The Settlement Administrator will use the Dispatch Data to calculate the total number of Drivers
12 Workweeks for each Driver, and will also calculate the aggregate total number of Drivers
13 Workweeks. The Drivers Class Fund will be divided by the aggregate total number of Drivers
14 Workweeks, resulting in the “Workweek Value for Drivers.” Each Individual Settlement Share for
15 Drivers will be calculated by multiplying each individual driver’s total number of Drivers
16 Workweeks by the Workweek Value for Drivers. (SA, §§ 2.16, 4.7.3.1.)

17 **Helpers Class Fund:** The Helpers Class Fund is half of the Net Settlement Sum (which
18 shall be split evenly between the Drivers Class Fund and Helpers Class Fund). The Helpers Class
19 Fund will be split proportionally among Helpers based on the total number of Helpers. The Helpers
20 Class Fund will be divided equally among all Helpers, and each Helper’s proportionate share of
21 that amount will constitute each Helper’s Individual Settlement Share for Helpers. (SA, §§ 2.25,
22 4.7.3.2.)

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24
25 ² The most current data for the drivers, which includes data from August 8, 2020 through April 27,
26 2024, identifies approximately 709 drivers. For purposes of this settlement, Plaintiffs are assuming
the equivalent number of helpers (i.e., 709 helpers), because each delivery truck required one
driver and at least one helper. (Avakian Decl., ¶ 39.)

27 ³ The current data for the drivers identifies approximately 533 drivers during the PAGA period.
28 As with the size of the Class Members, Plaintiffs are assuming, for purposes of settlement, that
there are an equivalent number of helpers as drivers (i.e., 533 helpers). (Avakian Decl., ¶ 39.)

1 **D. PAGA Settlement Awards**

2 PAGA Settlement Awards will be calculated and apportioned from the 25% of the PAGA
3 Settlement Amount (i.e., \$45,000) made up of the Drivers PAGA Fund and Helpers PAGA Fund),
4 as follows:

5 **Drivers PAGA Fund:** The Drivers PAGA Fund is half of the 25% of the total PAGA
6 Amount. The Drivers PAGA Fund will be split proportionally among Drivers based on their
7 individual Drivers PAGA Pay Periods. The Drivers PAGA Fund will be divided by the aggregate
8 total number of Drivers PAGA Pay Periods, resulting in the “PAGA Pay Period Value for Drivers.”
9 Each Individual PAGA Share for Drivers will be calculated by multiplying each individual
10 Driver’s total number of Drivers PAGA Pay Periods by the PAGA Pay Period Value for Drivers.
11 (SA, §§ 2.17, 4.7.3.1.)

12 **Helpers PAGA Fund:** The Helpers PAGA Fund is half of the 25% of the total PAGA
13 Amount. The Helpers PAGA Fund will be divided equally among all Helpers who were cleared to
14 work during the PAGA Period, and each Helper’s proportionate share of that amount will
15 constitute each Helper’s Individual PAGA Share for Helpers. (SA, §§ 2.26, 4.7.3.2.)

16 **E. Taxes and Withholdings**

17 Each Settlement Class Member’s Class Settlement Award shall be allocated as follows: (a)
18 20% as wages that will be subject to deductions and withholdings for the employee’s taxes and
19 required withholdings; and (b) 80% as penalties and interest that will not be subject to deductions
20 and withholdings. (SA, § 4.8.1.) For PAGA Group Members, each PAGA Settlement Award will
21 be allocated 100% to penalties that will not be subject to deductions and withholdings. (*Ibid.*)

22 **F. Settlement Administration**

23 Subject to Court approval, the parties have agreed to appoint Simpluris, Inc. as the
24 Settlement Administrator in this matter. (SA, § 2.67.) Within twenty (20) business days following
25 entry of the Preliminary Approval Order, Defendant will send or will cause to be sent to the
26 Settlement Administrator: (a) names, last known addresses, and social security numbers, to the
27 extent available, as provided to Defendant from the Released Third-Party Logistics Providers, for
28 the Class, as well as an indication of whether each Class Member was a driver, a helper, or both

1 during the Class Period, to the extent that information is available; and (b) DispatchTrack Data in
2 the form provided to Class Counsel for the period August 8, 2020 to April 27, 2024. (SA, § 4.3.1.)

3 Within twenty (20) business days after receiving the Class Members' data, the Settlement
4 Administrator will mail the Notice Packet (i.e., the Class Notice and the Request for Exclusion
5 form to all Class Members, plus the Notice of Eligible Workweeks form to Drivers only) via first
6 class U.S. Mail, using the most current mailing address. (SA, § 4.3.3.) Any Notice Packets returned
7 to the Settlement Administrator within thirty (30) calendar days of the initial mailing of the Notice
8 Packet, with a forwarding address, shall be immediately re-mailed by the Settlement
9 Administrator. (*Ibid.*) The Settlement Administrator shall conduct one skip trace address search
10 for any Class Member's Notice Packet that is returned to the Settlement Administrator within thirty
11 (30) calendar days of the initial mailing of the Notice Packet without a forwarding address and
12 shall, upon obtaining a new or different address, immediately re-mail the Class Member's Notice
13 Packet. (*Ibid.*)

14 **G. Content of Class Notice to Class Members**

15 The Class Notice that will be sent to each Class Member will contain the information
16 regarding: the nature of the litigation; a summary of the terms of the Settlement; the definition of
17 the Settlement Class Members; a statement that the Court has preliminarily approved the
18 Settlement; the nature and scope of the claims being released; the procedure and time period for
19 objecting to the Settlement, the date and location of the Final Approval Hearing; information
20 regarding the opt-out procedure; and the estimated potential recovery for the proposed Settlement
21 Class Member. (See **Ex. A to Ex. 1.**)

22 In addition, the Parties have agreed to a Publication Notice Plan aimed at reaching Helpers,
23 for whom the Released Third-Party Logistics Providers may not have complete records. (See **Ex.**
24 **B to Ex. 1.**) The Settlement Administrator has designed the Publication Notice Plan, which is
25 targeted at Spanish-speaking males ages 20-50 located in, or who frequently visit, the two locations
26 where RH maintains warehouses in California. Specifically, the Settlement Administrator will
27 place Facebook advertisements and radio advertisements in Spanish, on four radio stations.
28 (Springer Decl., ¶¶ 13-22.)

1 The Settlement Administrator will send a “Request for Information” form to all individuals
2 who respond to the publication notice and are not included in the names and contact information
3 of Helpers Class Members and Helper PAGA Members provided to the Settlement Administrator.
4 (SA, § 2.62; see also **Ex. C** to **Ex. 1**.) These individuals must submit a completed Request for
5 Information to allow the Settlement Administrator to determine if they are Helper Class Members
6 and/or Helper PAGA Members. (*Ibid.*) The Settlement Administrator will send a Notice Packet to
7 all individuals it determines are Helper Class Members to give them the option to participate in
8 the Settlement and/or Helper PAGA Members.

9 **H. Requests for Exclusion and Objection Procedure**

10 As also required, the Class Notice will include instructions on how Settlement Class
11 Members may opt-out or object to the settlement, or how Drivers may dispute the Workweek data.
12 (See **Exs. A, D-E** to **Ex. 1**.)

13 In order to exclude himself or herself from the class action portion of the Settlement, the
14 Settlement Class Member must either submit a written, signed Request for Exclusion form, or a
15 written, signed request with the information specified in the Request for Exclusion form, to the
16 Settlement Administrator, within the Notice Response Deadline. (SA, § 4.4.) The Request for
17 Exclusion must contain (i) a reference to the name of the action; (ii) the full name, signature, and
18 address of the person requesting to be excluded from the Class Settlement; (iii) the words “Request
19 for Exclusion” at the top of the document; and (iv) the statement: “I wish to be excluded from the
20 Class Settlement of this case.” (*Id.*, § 4.4.1.) The Notice Packet will include a Request for
21 Exclusion Form an option available to the Class Members. (*Id.*, § 4.4.2.) The Request for Exclusion
22 must be sent to the Settlement Administrator no later than forty-five (45) calendar days from the
23 date of initial mailing of the Notice Packet (plus an additional fifteen (15) calendar days for any
24 Notice Packets that are re-mailed to a Class Member). (*Id.*, § 2.37.) The Class Notice explains to
25 Settlement Class Members and PAGA Group Members that they may not exclude themselves from
26 the PAGA portion of the Settlement. (*Id.*, § 4.4.8; **Ex. A** to **Ex. 1**, at p. 4, #1).)

27 For purposes of this Settlement, workweek disputes are reserved for Driver Class
28 Members, only. The DispatchTrack data, on which the Settlement Administrator will rely in

1 calculating the number of workweeks, only contains the data for Drivers. As a result, neither
2 Defendant nor the Settlement Administrator possess objective data to evaluate any workweek
3 disputes from Helper Class Members. As a result, and as discussed above, the Helpers Class Fund
4 and the Helpers PAGA Fund will each be split proportionally among Helpers based on the total
5 number of Helpers. Helper Class Members will each receive an equivalent number of Workweeks,
6 and Helpers who were cleared to work during the PAGA Period will each receive an equivalent
7 number of PAGA Pay Periods. (SA, §§ 2.25-2.26, 4.7.3.2.)

8 If a Driver Class Member disputes the number of Workweeks set forth in the Notice of
9 Eligible Workweeks, such person must submit a written, signed dispute, to the Settlement
10 Administrator, by mail, postmarked on or before the Notice Response Deadline, and must include:
11 (i) a reference to the name and case number of the Action, (ii) the full name, signature, address,
12 and telephonic number of the Settlement Class Member; (iii) contain a clear statement explaining
13 that the Settlement Class Member wishes to dispute his or her Workweeks; (iv) clearly state the
14 number of Workweeks that he or she contends should be attributed to him or her; and (v) attach
15 any documentation demonstrating that the Settlement Class Member was not credited with the
16 correct number of Workweeks. (SA, §§ 2.36, 4.6.1.) The Driver Class Members' dispute must be
17 sent to the Settlement Administrator no later than forty-five (45) calendar days from the date of
18 initial mailing of the Notice Packet (plus an additional fifteen (15) calendar days for any Notice
19 Packets that are re-mailed to a Driver Class Member). (*Id.*, § 2.37.)

20 Settlement Class Members who opt out of the class action component of the Settlement
21 will not be entitled to a Class Settlement Award and will not be bound by the terms and conditions
22 of the class action portion of the Settlement. (SA, § 4.4.5.) All Settlement Class Members who do
23 not submit a valid and timely Request for Exclusion will be deemed to be included in the
24 Settlement Class and will be bound by the terms of the Settlement. (*Ibid.*)

25 Any Settlement Class Member who has not timely sought exclusion from the class action
26 portion of the Settlement may object to the Settlement by submitting a valid written objection by
27 the Notice Response Deadline or by appearing at the Final Approval Hearing (either personally or
28 through an attorney at the Class Member's own expense), to verbally state their objection. (SA,

§ 4.5.)

I. Release

As of the Effective Date, and only after Defendant has fully funded the Settlement, each Settlement Class Member shall release the Released Parties from the Released Class Claims: “[A]ll claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind arising during the Class Period, which were alleged in the Complaints or that could have been alleged against any of the Released Parties based on the factual allegations in the Complaints including claims under California Labor Code sections 200, 201, 202, 203, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and 3357; IWC Wage Orders, including Wage Order No. 9-2001, including sections 3, 4, 7, 8, 9, 11, and 12 thereof; California Code of Civil Procedure sections 1021.5 and 1060; and California Business and Professions Code section 17200 et seq. related only to the above claims.” (SA, §§ 2.57, 5.3.)

The Plaintiffs further will provide broader releases, including California Civil Code section 1542 waivers. (SA, § 5.5.)

As of the Effective Date, and only after Defendant has fully funded the Settlement, each PAGA Group Member shall release the Released Parties from the Released PAGA Claims: “[A]ll claims for civil penalties pursuant to PAGA that arose during the PAGA Period, which were alleged the Complaints or the PAGA Notice, or that could have been alleged based on the factual allegations in the Complaints or PAGA Notice, against any of the Released Parties, for alleged violations of California Labor Code sections 201, 202, 203, 204, 223, 226, 226.2, 226.3, 226.4, 226.7, 226.8, 256, 510, 512, 558, 1174, 1174.5, 1182.11, 1182.12, 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1195, 1197, 1198, 2802, and 2698 et seq.; IWC Wage Orders, including Wage Order No. 9-2001, including sections 3, 4, 7, 8, 9, 11, and 12 thereof.” (SA, §§ 2.58, 5.4.)

The Released Parties include “RH and the Released Third-Party Logistics Providers, and each of their respective present, former, and future parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns, and each of their (including RH’s and the Third-Party Logistics Providers’) respective present, past and future officers, directors, employees, partners (both general and limited), members, shareholders, agents,

attorneys, accountants, auditors, consultants, insurers, and any other successors, assigns, and legal representatives. (SA, § 2.59.) The Released Third-Party Logistics Providers include Allegiant Logistics, Apogee Logistics, Distribution Solutions, Inc. (or DSI), FGO Logistics, Pillar Logistics LLC, and Premier Last Mile, LLC (or PLM), which are third-party logistics providers RH contracted with for the delivery of RH merchandise during the Class Period. (SA, § 2.60.)

J. Treatment of Uncashed Settlement Checks

Settlement checks will be negotiable for 180 calendar days. The Administrator will transmit the sum of uncashed settlement payments, if any, to the Controller of the State of California to be held pursuant to the Unclaimed Property Law in the names of those Settlement Class Members and PAGA Group Members who did not cash their settlement checks until such time they claim their property. (See Code Civ. Proc., § 1500, *et seq.*) This disposition results in no “unpaid residue” under Code of Civil Procedure section 384 because the entire NSS will be paid out to Settlement Class Members and/or PAGA Group Members, whether or not they all cash their checks. (SA, § 4.11.3.)

IV. THE CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

Certification is appropriate when there exists “an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) As the Supreme Court has intoned, “[c]laims alleging a uniform policy consistently applied to a group of employees in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment.” (*Id.*, at 1033.) This is exactly such a case.

A. The Class Is Ascertainable

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 when that identification becomes necessary.’” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 974 [citation omitted].) Plaintiffs contend that the Class Members can be ascertained from

Defendant’s delivery tracking software programs, and other internal records identifying the names, contact information, and titles (i.e., driver or helper) of the Class. Ascertainability is satisfied.

B. The Class Is Numerous

The numerosity requirement is satisfied where it would be impracticable to bring all of the potential Class Members before the Court. (See, e.g., *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (holding that twenty-eight members sufficient to maintain class action).) Here, the proposed Class consists of approximately 1,418 potential Class Members. Further, the class definition is sufficient to allow Class Members to self-identify. (*Noel*, 7 Cal.5th at 980 (California Supreme Court holding that a class definition’s objective terms are “sufficient to allow a member of [the class] to identify himself or herself as having a right to recover on the [class] description.”) Numerosity is satisfied.

C. The Community of Interest Requirements Are Met

The community of interest requirement has three essential elements: “(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.” (*Brinker*, 53 Cal.4th at 1021.) Each of these criteria is met here.

1. Predominant Questions of Law and Fact Exist

The predominance requirement is satisfied when questions of law or fact common to the class predominate over individual questions. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435.) While the predominance element is extremely important in a disputed class certification motion, courts apply a “lesser standard of scrutiny for settlement cases” where the court does not need to consider whether the lawsuit is manageable for trial. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1807 n.19.) Here, the predominance factor is met because each claim challenges an alleged common policy or practice that Plaintiffs contend is illegal as to Plaintiffs and all Class Members. These sorts of claims are commonly held to be proper for class certification. (See, e.g., *Williams v. Superior Court* (2013) 221 Cal. App. 4th 1353, 1371 [certifying class based on uncompensated work time.]

1 **2. Typicality Is Satisfied**

2 Typicality “requires a showing that the class representative has claims or defenses typical
3 of the class.” (See, e.g., *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089.) Typicality
4 is satisfied where the plaintiff’s claims are “reasonably co-extensive” with absent Class Members’
5 claims. (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1020.) “[I]t has never been the
6 law in California that the class representative must have identical interests with the class
7 members.” (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) Here, Plaintiffs contend their
8 claims are typical of those held by other Class Members. Plaintiffs allege that they, and other Class
9 Members, were subjected them to the same company policies and procedures, and that they were
10 all misclassified as non-employees. Plaintiffs’ claims and alleged injuries arise from the same facts
11 and legal theories as the Class Members’ claims. Typicality is satisfied.

12 **3. Adequacy Is Satisfied**

13 The adequacy requirement examines conflicts of interest between named parties and the
14 class they seek to represent. (See *Capital People First v. State Dept. of Developmental Services*
15 (2007) 155 Cal. App. 4th 676, 697.) Here, Plaintiffs contend that they and their counsel will
16 adequately represent the Class Members, and that there are no conflicts between Plaintiffs and the
17 Class. (Kennedy Decl., ¶¶ 3-10; Avakian Decl., ¶¶ 48-54; Hamideh Decl., ¶¶ 3-9.) Plaintiffs’
18 counsel have extensive experience litigating complex class actions, including wage and hour class
19 actions. (*ibid.*); see also *McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450 (finding
20 adequacy satisfied where there was no indication that plaintiff’s counsel was not qualified and the
21 named plaintiff had no interests antagonistic to those of the proposed class).

22 **D. Superiority Is Satisfied**

23 A class action is superior to a multitude of individual lawsuits. Given the size and amount
24 of each individual Class Member’s claim, Class Members likely have little incentive to litigate
25 their claims individually because the expense necessary to litigate each claim outweighs any
26 potential recovery. (See *Martinez v. Joe’s Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 367
27 [“Litigation by class action has long been recognized as a superior method of resolving wage and
28 hour claims in California.”])

1 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

2 **A. Standard for Preliminary Approval of Settlement**

3 A class action may not be dismissed, compromised, or settled without approval of the
4 Court. (Cal. R. Ct. 3.769.) The Court's role in evaluating a proposed settlement is limited to
5 ensuring that the agreement taken as a whole is fair and is within the range of reasonableness. (See
6 *Hanlon*, 150 F.3d at 1027.) All the criteria for preliminary approval are satisfied here.

7 **B. The Settlement Is Entitled to a Presumption of Fairness**

8 A presumption of fairness exists where: (1) the settlement is reached through arm's-length
9 negotiations; (2) investigation and discovery are sufficient to allow counsel and the court to act
10 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
11 small. (*Dunk*, 48 Cal.App.4th at 1802.) The first three of these factors apply at the preliminary
12 approval stage.

13 **1. The Settlement Is the Product of Arm's-Length Negotiations**

14 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
15 proposed settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts
16 presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the
17 contrary is offered thus, there is a presumption that settlement negotiations are conducted in good
18 faith. (*Newberg on Class Actions* § 11.1 ("Newberg") (5th ed. 2011).)

19 Here, as detailed above and in the Avakian Declaration, the Settlement is the product of
20 extensive arm's-length negotiations carried out in an adversarial context. (Avakian Decl., ¶ 22.)
21 The Parties participated in a full-day mediation with Antonio Piazza, who is a highly skilled and
22 experienced mediator, including handling mediations of wage-and-hour class actions. (*Ibid*; see
23 also *Satchell v. Fed. Express Corp.* (N.D. Cal. Apr. 13, 2007), 2007 WL 1114010, at *4 ("The
24 assistance of an experienced mediator in the settlement process confirms that the settlement is non-
25 collusive."); *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 64 F.3d 935, 948 (presence
26 of a neutral mediator is a factor weighing in favor of a finding of non-collusiveness).) The Parties
27 reached the Settlement following a mediator's proposal. (Avakian Decl., ¶ 22.) The negotiations
28 were at all times adversarial and at arm's length. (*Ibid*.)

1 **2. Investigation and Discovery Were Sufficient to Evaluate Risks**

2 As detailed above and in the Avakian Declaration, the investigation and informal discovery
3 were sufficient to permit counsel and the Court to evaluate risk intelligently. (Avakian Decl., ¶¶
4 20-21.)

5 **3. Plaintiffs' Counsel Are Experienced in Similar Litigation**

6 Plaintiffs' counsel have substantial experience litigating wage-and-hour class actions and
7 representative actions. (Kennedy Decl., ¶¶ 3-10; Avakian Decl., ¶¶ 48-54; Hamideh Decl., ¶¶ 3-
8 9.)

9 **C. The Proposed Settlement Is Fair, Adequate and Reasonable**

10 When determining a settlement's fairness at preliminary approval, courts consider: "the
11 strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation,
12 the risk of maintaining class action status through trial, the amount offered in settlement, the extent
13 of discovery completed and the stage of the proceedings, [and] the experience and views of counsel
14 ..." (*Dunk*, 48 Cal. App. 4th at 1801.) "The list of factors is not exclusive and the Court is free to
15 engage in a balancing and weighing of the factors depending on the circumstances of each case."
16 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.) Application of the *Dunk*
17 factors here demonstrates the proposed settlement is fair, adequate and reasonable.

18 **1. The Strength of Plaintiffs' Case**

19 Although Plaintiffs maintain that their claims are meritorious, Plaintiffs acknowledge there
20 are substantial risks and uncertainty in proceeding with trial on the merits. (Avakian Decl., ¶ 28.)
21 As described below, Defendant has presented multiple defenses to Plaintiffs' claims. (*Ibid.*) While
22 Plaintiffs were prepared to litigate their claims through trial, success was far from certain. (*Ibid.*)
23 Thus, Plaintiffs and their counsel concluded that the non-reversionary Settlement of \$6,000,000
24 was fair, reasonable, and ensured that the Class was left with a substantial recovery. (*Ibid.*)

25 **2. Risk, Expense, Complexity and Duration of Further Litigation**

26 If the case had not settled, Plaintiffs would anticipate three to four years of additional
27 litigation. (Avakian Decl., ¶ 28.) Both Parties would engage in extensive formal discovery,
28 including depositions of Plaintiffs, Defendant's person most knowledgeable, putative class

members, and each Party's experts. (*Ibid.*) Plaintiffs would have also faced the risk of the Court possibly not granting their certification motion. (*Ibid.*) If Plaintiffs' certification motion were granted, the Parties would incur more attorneys' fees and costs through a possible decertification motion, trial, and possible appeals. (*Ibid.*) This Settlement avoids those risks and the accompanying expense.

3. Amount Offered in Settlement Given the Realistic Value of the Claims

"The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) In connection with mediation (and the subsequent mediation sessions), Plaintiffs conducted an exposure analysis, based on the data Defendant provided at mediation. (Avakian Decl., ¶¶ 29-38.) Based on that analysis, Plaintiffs predicted the maximum total recovery on the Class and PAGA claims, for this Action, only, as follows:

Claim	Maximum Recovery
Unpaid Minimum Wages	\$1,981,615.00
Liquidated Damages (Unpaid Minimum Wages)	\$1,981,615.00
Unpaid Overtime Wages	\$3,767,824.00
Meal Period Premium Wages	\$588,408.00
Rest Period Premium Wages	\$591,497.00
Failure to Pay Separately for Rest Periods	\$196,651.00
Unpaid Reimbursement of Expenses	\$579,929.00
Unlawful Deductions	\$429,362.00
Inaccurate Wage Statement Penalties	\$982,387.50
Waiting Time Penalties	\$4,091,251.00
PAGA claim	\$41,667,109.70
TOTAL	\$56,857,649.20

Unpaid Minimum and Overtime Wages Claims: These claims are based on Plaintiffs' allegations that Defendant failed to properly treat them and the Class as employees and, as a result, failed to compensate them minimum wages and/or overtime wages for the time they spent performing RH deliveries. (Avakian Decl., ¶ 30.) Plaintiffs strongly believed that they could prevail at trial on this claim, particularly in light of settlement statements and deposition testimony from Plaintiffs and the Class that the Class was paid a daily flat fee (as opposed to an hourly rate

1 of pay) or were paid per route and/or stop. (*Ibid.*) Nevertheless, Plaintiffs anticipate that Defendant
2 would argue that individualized inquiries would be necessary to determine how each entity that
3 contracted with the third-party logistics providers to provide delivery services compensated the
4 non-contracting drivers and/or helpers who worked under each entity, and whether these Class
5 members were compensated for minimum and/or overtime wages. (*Ibid.*) In addition, Defendant
6 would argue that individualized inquiries would be necessary to determine the rate and
7 methodology of payment by the contracting entities to the non-contracting Class members. (*Ibid.*)
8 Further, as to the drivers, Defendant would argue that the Department of Transportation's
9 regulations governing the hours of services of drivers preempt California's overtime laws. (49
10 C.F.R. § 395.1 to 395.13 (the "motor carrier exemption"); Cal. Code Regs. tit. 8, § 11070(3)(K).)
11 (*Ibid.*)

12 For the unpaid minimum wages claim, and because there were no pay records (other than
13 for the contracting drivers), Plaintiffs first had to determine an estimated amount that the Class
14 already received as pay. (Avakian Decl., ¶ 30.) For non-contracting drivers, and based on
15 deposition testimony of the Class in *Zavala*, Plaintiffs assumed a daily rate of \$155 for the year
16 2020, with a \$5 increase per year thereafter, through 2023. For helpers, based on the deposition
17 testimony in *Zavala*, Plaintiffs assumed a daily rate of \$115 in 2020, with a \$5 increase per year
18 thereafter, through 2023. For contracting drivers, Plaintiffs based their pay on the settlement
19 statements, less the assumed daily rates paid to helpers. To calculate the unpaid minimum wages,
20 Plaintiffs relied on the delivery tracking data (i.e., DispatchTrack data), and, to the extent the data
21 was incomplete, Plaintiffs relied on averages obtained from the *Zavala* data. (*Ibid.*) To account for
22 work that Plaintiffs allege the Class performed at RH's warehouse (either prior to the first delivery,
23 or after the last delivery of the day), they estimated an additional 3 hours of off-the-clock work per
24 day. (*Ibid.*) Based on the 3 hours of off-the-clock work per day, plus the amount of time spent from
25 the first delivery to the last delivery of the day (per the DispatchTrack data and/or averages
26 obtained from the *Zavala* data), and the estimated amounts that the Class received as pay, Plaintiffs
27 multiplied the assumed daily rates by the number of days worked per week, and divided that figure
28 by the total number of hours worked per week. (*Ibid.*) They calculated an average of unpaid

1 minimum wages of \$4.17 per week due for drivers, and \$178.91 per week for helpers. (*Ibid.*) Based
2 on these figures, unpaid minimum wages were calculated at \$1,981,615.00, with liquidated
3 damages for unpaid minimum wages also calculated at \$1,981,615.00, for a total of \$3,963,230.
4 (*Ibid.*) For mediation valuation purposes, and taking into account Defendants' defenses, applying
5 a 60% discount to this claim would result in a reduced valuation number of \$1,585,292.00. (*Ibid.*)

6 A similar analysis was conducted for the unpaid overtime wages claim, except that the
7 estimated overtime rates are as follows: \$23.51 for drivers, and \$14.67 for helpers. (Avakian Decl.,
8 ¶ 30.) Plaintiffs then calculated the amount of unpaid wages by multiplying the overtime (and/or
9 double-time) hourly rates (time spent in excess of 8 hours per day) by the time spent performing
10 deliveries per the DispatchTrack data and/or averages extrapolated from the *Zavala* data, and
11 subtracting the estimated amount paid (per the settlement statements and/or the average daily rate).
12 (*Ibid.*) They calculated an average of unpaid overtime wages of \$215.49 per week due, for drivers,
13 and \$132.60 per week due, for helpers. (*Ibid.*) Based on these figures, unpaid overtime wages were
14 calculated at \$3,767,824.00. (*Ibid.*) For mediation valuation purposes, and taking into account
15 Defendants' defenses, applying a 60% discount to this claim would result in a reduced valuation
16 number of \$1,507,129.60. (*Ibid.*)

17 **Meal Period Claim:** The meal period claim is based primarily upon the theory that,
18 because Defendant did not properly classify the Class as employees, Defendant failed to provide
19 timely, duty-free, uninterrupted meal periods, compliant with California law. (Avakian Decl.,
20 ¶ 31.) Defendant would likely argue that the FMCSA's December 2018 Determination wiped out
21 Plaintiffs' meal period claim, because such claim was preempted by federal regulations. (*Ibid.*)
22 The Ninth Circuit upheld the FMCSA's Determination in *Int'l Bhd. of Teamsters*. (*Ibid.*)
23 Additionally, this Court, in *Zavala*, granted a motion for summary adjudication as to the drivers,
24 and dismissed Plaintiffs' meal period claim as to the drivers. (*Ibid.*) Further, in its Order on
25 Plaintiffs' class certification motion, the Court, in *Zavala*, reconsidered its prior order on the
26 motion for summary adjudication, as to the helpers, and determined that the FMCSA's
27 determination resulted in an obstacle preemption of California's meal and rest break laws. (*Ibid.*)
28 There was a risk, then, that the Court would make similar rulings in this case.

1 Plaintiffs calculated damages for the meal period claim for purposes of settlement, for the
2 helpers only, by assuming one meal period violation for each shift that was greater than 5 hours in
3 length, per the DispatchTrack data. (Avakian Decl., ¶ 31.) Plaintiffs determined that there were
4 approximately 40,700 shifts in excess of 5 hours. (*Ibid.*) The same average hourly rates used for
5 the unpaid minimum wages claim were used to calculate meal period premiums. (*Ibid.*) A total of
6 \$588,408.00 was calculated for the failure to provide meal period claim. (*Ibid.*) However, in light
7 of a possible dismissal of this claim, this claim can be discounted by 100%, resulting in a value of
8 \$0. (*Ibid.*)

9 **Rest Period Claim and Failure to Pay Separately for Rest Periods Claim:** Plaintiffs'
10 rest period claim and failure to pay separately for rest periods claim were based on the same theory
11 as the meal period claim. Plaintiffs faced the same risks for the rest period claims as those discussed
12 above for the meal period claim. (Avakian Decl., ¶ 32.) Plaintiffs calculated damages for the rest
13 period claim for purposes of settlement, for the helpers only, by assuming one rest period violation
14 for each shift that was greater than 3.5 hours in length, per the DispatchTrack data. (*Ibid.*) Plaintiffs
15 determined that there were approximately 40,898 shifts in excess of 3.5 hours. The same average
16 hourly rates used for the unpaid minimum wages claim were used to calculate rest period
17 premiums. (*Ibid.*) A total of \$591,497.00 was calculated for the failure to provide rest period claim.
18 (*Ibid.*) However, in light of a possible dismissal of this claim, this claim can be discounted by
19 100%, resulting in a value of \$0. (*Ibid.*)

20 A total of \$196,651.00 was calculated for the failure to pay separately for rest periods
21 claim, where Plaintiffs assumed one 10-minute rest period for each work day greater than or equal
22 to 3.5 hours and up to 5 hours, and assumed two 10-minute rest periods for each work day greater
23 than 5 hours. (Avakian Decl., ¶ 33.) For 40,700 shifts (which were in excess of 5 hours), Plaintiffs
24 calculated damages for two 10-minute rest periods, and for 198 shifts (which were in excess of 3.5
25 hours but less than 5 hours), Plaintiffs calculated damages for one 10-minute rest period. (*Ibid.*)
26 Calculations were made using the same average hourly rates discussed above, multiplied by either
27 one or two hours, depending on the length of the shift, per the data (i.e., one hour for a single rest
28 break-eligible shift; and two hours for a shift eligible for two rest breaks). (*Ibid.*) Although the

1 Court did not dismiss this claim, Plaintiffs would likely not have been able to proceed with this
2 claim if the underlying failure to provide rest period claim was dismissed. (*Ibid.*) As such, this
3 claim can also be discounted by 100%, resulting in a value of \$0. (*Ibid.*)

4 **Unreimbursed Business Expenses Claim:** This claim was based upon failure to
5 reimburse expenses incurred by Plaintiffs and other Class members for, among other expenses (1)
6 the use of their personal cellular phones; (2) business license expenses; and (3) vehicle
7 maintenance expenses. (Avakian Decl., ¶ 34.) For purposes of settlement, Plaintiffs limited
8 damages calculations to these three categories of expenses. (*Ibid.*) The Court, in *Zavala*, did not
9 certify Plaintiffs' business expense reimbursement claim. (*Ibid.*) As such, there was a concern that
10 this Court would have wiped out this claim in this case, as well. (*Ibid.*)

11 For purposes of settlement, Plaintiffs calculated unreimbursed expenses, as follows: (1) for
12 cellular phone expenses, \$8.85 per week for each year, with the damages split between the drivers
13 and helpers (for approximately 976⁴ individuals) as only one personal cellular phone was needed
14 per truck to communicate with Defendant and/or RH's customers; (2) for drivers (for
15 approximately 15% of the total workweeks for drivers⁵ of 10,824), \$800 per year was estimated
16 for business license expenses, and vehicle maintenance expenses were based on 400 miles per
17 week at the IRS mileage rate. (*Ibid.*) In total, expenses were calculated at \$579,929.00. (*Ibid.*) In
18 light of a possible order denying certification of this claim, this claim can also be discounted by
19 100%, resulting in a value of \$0. (*Ibid.*)

20 **Unlawful Deductions Claim:** This claim was based upon deductions that were made from
21 contracting drivers' settlement statements, which included, but was not limited to, workers'
22 compensation insurance, administrative service fees, etc. (Avakian Decl., ¶ 35.) Defendant would
23 likely have argued individualized inquiries regarding Plaintiffs' misclassification claim, on which
24 the unlawful deductions claim was premised. (*Ibid.*) This claim pertains only to the contracting
25

26 ⁴ This figure was based on data that Plaintiffs had at the time of mediation, which went through
27 approximately June 2023. (Avakian Decl., ¶ 34, fn. 2.)

28 ⁵ Plaintiffs attributed 15% of the total driver workweeks to contracting drivers, based on the
averages extrapolated from the *Zavala* data. (Avakian Decl., ¶ 34, fn. 3.)

1 drivers, or approximately 15% of the 10,824 workweeks, based on the data that Defendants
2 provided prior to mediation, as well as the averages extrapolated from the *Zavala* data. (*Ibid.*) For
3 these individuals, Plaintiffs totaled the amount of deductions reflected in their settlement
4 statements, which totaled approximately \$429,362.00. (*Ibid.*) In light of the risks discussed, a 40%
5 discount can be attributed to this claim, resulting in a value of \$257,617.20. (*Ibid.*)

6 **Derivative Claims:** Plaintiffs' remaining claims are derivative in nature and would thus
7 stand or fall with the claims discussed above and implicate the same risks in proving liability
8 discussed above. Plaintiffs calculated the inaccurate wage statement claim by estimating
9 approximately 609 employees that worked during the period of June 9, 2021 to August 16, 2023,
10 and calculating the maximum penalty amount, under Labor Code section 226, of \$4,000, thus
11 totaling \$982,387.50. (Avakian Decl., ¶ 36.) When taking into account the risks of trial and other
12 uncertainties, Plaintiffs reduced the valuation on the wage statement claim by 60% to \$392,955.00.
13 (*Ibid.*) Ultimately, there was no guarantee that these penalties would apply if any provable wage
14 statement violations were not knowing/intentional. (*Ibid.*)

15 Additionally, Plaintiffs contend that all Class Members whose employment with Defendant
16 ended between August 8, 2020 to August 16, 2023, are entitled to derivative "waiting time"
17 penalties under Labor Code section 203, as a result of Defendant's failure to pay all wages due
18 and owing at the end of separation. Based on the data provided by Defendant, it is estimated that
19 there are approximately 817 Class Members whose work with Defendant ended during this time.
20 (Avakian Decl., ¶ 37.) Plaintiffs' counsel calculated the total potential exposure for waiting time
21 penalties as \$4,091,251, arrived at as follows: 817 Class Members * (\$214.21/day for drivers or
22 \$119.52/day for helpers) * the number of days worked, as reflected in the data * 30 days. (*Ibid.*)
23 That is full value. However, in addition to the normal litigation risks and Plaintiffs needing to
24 prevail on their misclassification claim, Defendant would have argued that Plaintiffs could only
25 recover waiting time penalties if they are able to establish an entitlement to the underlying wages
26 and that Plaintiffs would need to prove the conduct alleged was "intentional," and that Defendant
27 attempted to pay the Class all final wages owed in good faith upon their separation, therefore
28 precluding the finding of willfulness necessary to obtain waiting time penalties. (Cal. Code Regs.,

1 tit. 8, § 13520.) (*Ibid.*) Based on Defendant’s anticipated defenses, Plaintiffs discounted the
2 estimated recovery to this claim by 60%, resulting in an estimated potential exposure of
3 \$1,636,500.40. (*Ibid.*)

4 **PAGA Claim:** There are approximately 7,257 pay periods at issue, from June 9, 2021 to
5 August 16, 2023, according to the data Defendant provided. Assuming that each pay period
6 triggers PAGA penalties and that PAGA penalties may be “stacked,” the maximum potential
7 exposure was estimated to be approximately \$41,667,109.70. (Avakian Decl., ¶ 38.) However,
8 Defendant would have presented a number of defenses to the PAGA claim. It was expected that
9 Defendant would argue that individual inquiries would be necessary to establish liability for the unpaid
10 wages claim, for all aggrieved employees. (*Ibid.*) Although our California Supreme Court, in *Estrada*
11 *v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, 614 recently held that a PAGA claim may not
12 be stricken on the basis of manageability, the Court discussed that trial courts have many tools
13 available in managing a PAGA case, which include, but are not limited to, limiting the types of
14 evidence a plaintiff may present, or issuing substantive rulings, such as on a demurrer or motion
15 for summary judgment, if plaintiff pleads the claim in an overbroad or unspecific manner and is
16 unable to prove liability as to all or most employees. (*Id.*, at 619-20.) There was a risk, therefore,
17 that this Court could grant summary judgment to Defendant, on the PAGA claim, or could limit
18 the types of evidence that Plaintiffs present, thus seriously jeopardizing Plaintiffs’ case.

19 Defendant would further argue that, even if Plaintiffs were able to establish the underlying
20 Labor Code violations, the Court possesses the ability to significantly reduce any PAGA civil
21 penalties that may be awarded. (See Labor Code §2699(e)(2) (authorizing reduction in PAGA
22 penalties in trial court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.
23 App. 4th 1112, 1135 (affirming reduction of PAGA penalties).) In *Fleming v. Covidien Inc.* (C.D.
24 Cal. Aug. 12, 2011) 2011 WL 7563047, at *4, a federal court reduced PAGA penalties from
25 \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
26 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded
27 no civil penalties, even when Labor Code violations are established. (See, e.g., *Cotter v. Lyft, Inc.*
28 (N.D. Cal. 2016) 193 F.Supp.3d 1030 (indicating that a substantial reduction is warranted where

1 good faith dispute exists in legal obligations); *In re Taco Bell Wage & Hours Actions* (E.D. Cal.
2 Apr. 8, 2016) 2016 WL 2755938, at *13 (PAGA penalties denied after trial.) Similarly, in
3 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the Court of Appeal affirmed a
4 judgment after trial which only provided for a PAGA penalty of \$5 per pay period (reduced from
5 \$50 per pay period). Therefore, any PAGA penalties awarded following trial could be significantly
6 less than Plaintiffs' calculations, even if Plaintiffs prevail on the PAGA claim.

7 Finally, Defendant would also likely contend that the Court should not "stack" penalties
8 for the same underlying conduct. (See, e.g. *Smith v. Lux Retail North America, Inc.* (N.D. Cal.
9 2013) 2013 WL 2932243, at *1, *4.) As such, if the Court were to decline to stack penalties under
10 PAGA, the maximum potential recovery under PAGA would be substantially less.

11 Moreover, Plaintiffs' counsel recognized that protracted litigation of the alleged claims
12 would be expensive, time-consuming, and uncertain. (Avakian Decl., ¶ 38.) To prove liability and
13 damages, Plaintiffs will need to conduct extensive discovery, request and analyze additional data
14 and documents, contact aggrieved employees, and obtain numerous declarations, at great expense.
15 (*Ibid.*) Moreover, even if Plaintiffs prevailed at trial, possible appeals could delay recovery.
16 Accordingly, there is a significant risk that Plaintiffs could ultimately recover nothing. (*Ibid.*)

17 Further, the aggrieved employees would only be entitled to 25% of any resulting award
18 (or, \$10,416,777.40) in this case, in the highly unlikely event that Plaintiffs could successfully
19 obtain a judgment for Defendant's total estimated exposure.) (Avakian Decl., ¶ 38.) After taking
20 these factors into consideration, Plaintiffs believe it was appropriate to discount the PAGA claim
21 by 60% of this amount, resulting in an estimated potential recovery of \$4,166,710.94. (*Ibid.*)

22 The proposed settlement of \$6,000,000 thus represents approximately 62.9% of the
23 predicted (realistic) maximum class-wide recovery of \$9,546,205.14, a remarkable result, in light
24 of the cumulative risks discussed in detail above. (Avakian Decl., ¶ 40.) The average gross
25 recovery per Class Member, using the estimate of 1,418 Class, equals \$4,231.31 (\$6,000,000 /
26 1,418). (*Ibid.*) The average net recovery per Class Member equals \$2,563.74 (Net Settlement Sum
27 of \$3,635,377.00 / 1,418). (*Ibid.*) The average gross recovery per PAGA Group Member, using
28 Defendant's estimate of 1,066 PAGA Group Members, equals \$168.86 (\$180,000 (PAGA

Settlement Amount) / 1,066). (*Ibid.*) The average net recovery per PAGA Group Member equals \$42.21 (25% amount of PAGA Settlement (\$45,000 / 1,066). (*Ibid.*)

Preliminary approval is appropriate since the settlement value of \$6,000,000 falls well within the range of reasonableness, and is thus fair, adequate and reasonable, in light of the risks highlighted above.

4. Discovery Completed and the Status of Proceedings

As detailed above, and in the Avakian Declaration, Plaintiffs' counsel engaged in extensive investigation and discovery throughout this litigation. (Avakian Decl., ¶¶ 20-21.)

5. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378.) Plaintiffs are represented by competent and experienced counsel who pressed Plaintiffs' claims forward against reputable defense counsel well versed in class and representative actions. Plaintiffs' counsel possess extensive experience litigating class actions and representative actions. (Kennedy Decl., ¶¶ 3-10; Avakian Decl., ¶¶ 48-54; Hamideh Decl., ¶¶ 3-9.) Based on that experience, Plaintiffs' counsel believe that the settlement is fair, reasonable, and adequate.

For all of these reasons, application of the *Dunk* factors weighs heavily in favor of granting preliminary approval of the Settlement.

D. The Court Should Preliminarily Approve the Service Payments

Service awards "are fairly typical in class action cases." (*In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-94.) Service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-959.) The Settlement provides that Plaintiffs may apply for a service award of \$5,000, each (for a total of \$10,000) to be paid from the GSA. (SA, § 3.7.) The request for these awards are disclosed in the proposed Notice.

1 As will be fully briefed before the Final Approval Hearing, the requested service awards
2 are fair and reasonable compensation for Plaintiffs' efforts in representing the Class and the
3 interests of the State of California, and assisting counsel with the litigation and settlement.
4 (Avakian Decl., ¶¶ 45-47; Hernandez Decl., ¶¶ 7-15; Erazo Decl., ¶¶ 7-15.) Based on the
5 foregoing, the requested service awards are reasonable and should be preliminarily approved.

6 **E. The Court Should Preliminarily Approve Counsel's Attorneys' Fees and**
7 **Costs**

8 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
9 took the risk of non-payment and invested in a case that achieved a substantial positive result for
10 the Class. California courts routinely award attorneys' fees equaling one-third or more of the
11 potential value of the common fund. (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n.11.)

12 Here, the Settlement provides that Class Counsel may apply for an award of attorneys' fees
13 in an amount not to exceed 35% of the GSA, or \$2,100,000, and costs not to exceed \$50,000, with
14 the purpose of rewarding Class Counsel who took the risk of non-payment and invested in a case
15 that achieved a substantial positive result for the Class. (SA, § 3.5.) Class Counsel will provide
16 ample support, in the form of detailed lodestar and cost summaries, for the requested attorneys'
17 fees and costs. Class Counsel have entered into a fee splitting agreement, with Marlin & Saltzman,
18 LLP receiving 65% of the fees, and The Hamideh Firm, PC receiving 35% of the fees. (Avakian
19 Decl., ¶ 55.)

20 The amount of requested fees and costs is set forth in the proposed Notice. In connection
21 with Plaintiffs' Motion for an Award of Attorneys' Fees and Costs, counsel will address the many
22 reasons why this settlement justifies the requested fees and costs, and will provide billing
23 information so that the Court can conduct a lodestar analysis. Based on the foregoing, Plaintiffs
24 submit that the requested attorneys' fees and costs are reasonable and should be preliminarily
25 approved, subject to Court approval at the Final Approval Hearing.

26 **F. The Court Should Appoint Simpluris As the Settlement Administrator and**
27 **Preliminarily Approve the Settlement Administration Costs**

28 The Parties have agreed to use Simpluris to administer the settlement. (SA, § 2.67.)

1 Simpluris is a reputable class action administrator that has successfully administered over a
2 thousand class action settlements. The Settlement provides that the Court will approve the
3 administration costs at the Final Approval Hearing. At this stage, Plaintiffs request that the Court
4 appoint Simpluris as the Settlement Administrator and submits that Settlement Administration
5 Costs in the amount of no greater than \$24,623.00 are reasonable and should be preliminarily
6 approved, subject to Court approval, at the Final Approval Hearing.

7 **VI. THE COURT SHOULD ORDER DISTRIBUTION OF THE CLASS NOTICE**

8 The Court should order distribution of the proposed Class Notice by first-class mail,
9 postage prepaid, using the last known mailing address information. This manner of providing
10 notice satisfies California law because the notice has “a reasonable chance of reaching a substantial
11 percentage of the Class Members.” (*Noel*, 7 Cal. 5th at 984 (citation omitted); see also Cal. R. Ct.
12 3.769 (f).) The Settlement Administrator will mail the Class Notice to Class Members within
13 twenty (20) business days after receiving the Class Members’ data. (SA, § 4.3.3.) To the extent
14 any Notices are returned as undeliverable, Simpluris will conduct skip traces to obtain current
15 address information. (*Ibid.*) In addition, the Publication Notice plan will provide notice of the
16 Settlement to Helpers. (SA, § 2.62; see also **Ex. B** to **Ex. 1**.) Providing Notice in this manner
17 satisfies Rule 3.766(e) as the most reliable, cost-effective method of reaching Class Members.

18 The content of the proposed notice satisfies Rule 3.766(d) because it advises Class
19 Members of the nature of the claims, the key terms of the Settlement, the uniform 45-day deadline
20 to opt-out or object to the class action portion of the Settlement and the procedure by which to do
21 so, explains the formula for calculating settlement payments, provides the estimated settlement
22 payment for each Class Member, explains the procedures for Drivers disputing the number of
23 workweeks attributed to them, and advises them that they will be bound by the terms of the
24 Settlement if they do not request exclusion. It further advises the PAGA Group Members that they
25 do not have the right to opt-out of or object to the PAGA portion of the Settlement. (See **Ex. A** to
26 **Ex. 1**.) The proposed Notice also notifies Class Members of the Final Approval Hearing date and
27 provide the Class with Class Counsel’s contact information and advises Class Members that they
28 may enter an appearance through counsel if they wish at the Final Approval Hearing. (*Ibid.*)

To further ensure that Class Members are well informed concerning the Settlement, the Settlement Administrator will also establish a toll-free telephone number and establish a website that will inform Class Members of the terms of the Settlement, their rights, dates, deadlines with respect to the Settlement. (SA, § 4.3.2.11.) Provided the Court finally approves the Settlement, the Court's Final Approval Order and Judgment will be posted on the website. (*Ibid.*) Finally, the proposed Notice will be provided to the Class in English and in Spanish. (*Id.*, § 4.3.)

VII. PLAINTIFFS HAVE COMPLIED WITH THE ADMINISTRATIVE REQUIREMENTS OF CALIFORNIA LABOR CODE SECTION 2699

The Settlement Agreement and this Motion are being submitted to the LWDA, as required by California Labor Code section 2699(l)(2). (Avakian Decl., ¶ 11, Ex. 2.)

VIII. PROPOSED TIMELINE FOR SETTLEMENT

If the Court preliminarily approves the Settlement, Plaintiffs propose the following schedule:

Event	Timing
Last day for Defendant to produce the Class Members' data to the Settlement Administrator.	20 business days after entry of the Preliminary Approval Order
Last day for the Settlement Administrator to mail Class Notice ("Notice Date").	20 business days after receiving the Class Members' data from Defendant
Last day for Class Members to submit Requests for Exclusion, or object, to the Settlement, or dispute the number of Workweeks attributed to them ("Response Deadline").	45 calendar days after Notice Date (plus 15 calendar days for re-mailed notices)
Last day for Settlement Administrator to provide Counsel with declaration of due diligence.	10 business days before Final Approval Hearing
Last day for Class Counsel to file Motion for Final Approval of Class Action and PAGA Settlement	16 court days before Final Approval Hearing
Last day for Class Counsel to file Motion for Attorneys' Fees, Costs, and Class Representative Service Payments	16 court days before Final Approval Hearing
Final Approval Hearing	October 15, 2024, at 8:30 a.m., or a date thereafter convenient for the Court

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1 **IX. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully requests that the Court grant this Motion,
3 enter the proposed Preliminary Approval Order, and set a date for Final Approval Hearing.

4
5 DATED: May 16, 2024

MARLIN & SALTZMAN, LLP
THE HAMIDEH FIRM, P.C.
LAW OFFICES OF KEVIN T. BARNES
LAW OFFICES OF RAPHAEL A. KATRI

6
7
8 By: 

Alan S. Lazar, Esq.
Cody R. Kennedy, Esq.
Stephen P. O'Dell, Esq.
Tatiana G. Avakian, Esq.
Attorneys for Plaintiffs

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF LOS ANGELES)

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is 29800 Agoura Road, Suite 210, Agoura
Hills, California 91301.

5 On May 16, 2024, I served the foregoing document described as **PLAINTIFFS'**
6 **UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND**
PAGA SETTLEMENT on all interested parties in said action:

7 **SEE ATTACHED SERVICE LIST**

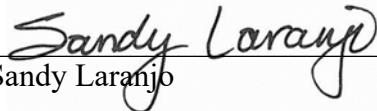
8 ☒ (VIA E-SERVICE) I caused to have such document served via E-Service with OneLegal.

9 ☐ (VIA E-MAIL) The above-named document has been electronically served on counsel of
10 record by electronically mailing a true and correct copy through Marlin & Saltzman's
electronic mail system to the e-mail address(s) set forth above, or as stated on the attached
11 service list.

12 ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

13 ☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court
14 at whose direction the service was made.

15 Executed on May 16, 2024, at Agoura Hills, California.

16 
17 Sandy Laranjo

Hernandez v. Restoration Hardware
San Bernardino County Superior Court Case No. CIVSB2211655

Service List

Tritia Murata, Esq. Nancy R. Thomas, Esq. Maya Harel, Esq. DAVIS WRIGHT TREMAINE LLP 865 S. Figueroa Street, 24th Floor Los Angeles, CA 90017-2455 Telephone: (213) 633-6800 Facsimile: (213) 633-6899 TritiaMurata@dwt.com NancyThomas@dwt.com MayaHarel@dwt.com	Attorneys for Defendant RESTORATION HARDWARE, INC.
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