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on behalf of himself and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

MICHAEL BOLDS, on behalf of himself and all others similarly situated, Plaintiff, v. TRANSPORTUS INC., a California Corporation; and DOES 1 Through 10, inclusive, Defendant.	Case No. CIVSB2515019 ASSIGNED FOR ALL PURPOSES TO: The Honorable Donald Alvarez Department S23 **CLASS ACTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** Date: June 11, 2026 Time: 9:00 a.m. Dept.: S23 Complaint filed: May 27, 2025 Trial date: Not Set

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I. INTRODUCTION

Plaintiff Michael Bolds seeks preliminary approval,[1] under Rule 3.769(c) of the California Rules of Court, of a $150,000.00 non-reversionary Settlement on behalf of approximately 211 non-exempt drivers who worked for Defendant TransportUS, Inc. ("TransportUS") in California from May 27, 2021, to May 25, 2026.

This is a cash settlement, and all Class Members who do not opt out will receive a payment, without submitting a claim form. On May 27, 2025, Plaintiff Michael Bolds filed a class action Complaint on behalf of himself and other non-exempt, hourly-paid drivers, alleging claims for failure to pay minimum wages, overtime and reporting time wages, provide meal and rest periods, pay meal and rest break premiums, provide accurate itemized wage statements, reimburse business expenses, and for derivative claims under Labor Code sections 203, 226 and the UCL, as well as attorneys' fees and costs. Plaintiff amended his complaint on June 26, 2025 by adding claims under PAGA. Plaintiff further alleges that he performed off-the-clock work, including pre-shift duties and work during at times reported to work but was provided no work nor reporting time pay.

The Parties reached this settlement after mediation before an experienced neutral. Plaintiff argues that Defendant's maximum potential liability for Plaintiff's direct non-PAGA claims is $914,295.00, or $1,651,251.00 with derivative waiting time and wage statement penalties. Thus, the $150,000 Gross Settlement Amount represents 16.4% of TransportUS's maximum potential liability for Plaintiff's direct claims, and 9.1% of all Plaintiff's claims, including derivative claims. This is an excellent result given the risks of continued litigation, considering the existence of arbitration agreements that could bar any class wide recovery, and it falls within the typical range of class action settlement amounts.

II. PROCEDURAL HISTORY

Plaintiff Michael Bolds filed a class action complaint on May 27, 2025, alleging claims for failure to pay minimum wages, overtime and reporting time wages, provide meal and rest periods, pay meal and rest break premiums, provide accurate itemized wage statements, reimburse business

[1] This memorandum exceeds the 15-page limit set forth in Cal. Rule of Court 3.1113 because it seeks class certification as part of the settlement approval process, which has a 20-page limit.

expenses, and for derivative claims under Labor Code sections 203 and 226, and violations of the UCL, as well as attorneys' fees and costs. Plaintiff amended his complaint to add a cause of action under PAGA on June 26, 2025. Decl. of Maggie Realin ("Realin Decl."), ¶2. The Parties engaged in meet and confer efforts and at one point agreed to mediation. *Id.*, ¶10.

III. FACTUAL BACKGOUND

Defendant is a non-emergency medical transport company that provides door to door service for veterans and other individuals. https://transportus.us/#about-us.

Plaintiff worked for TransportUS, Inc. as a non-exempt medical transportation driver from September 2024 to March 2025, covering San Bernardino, Riverside, and Los Angeles Counties. He alleges that he regularly worked long shifts of 12–14 hours per day, often beginning early in the morning, transporting primarily veterans between their residences and medical facilities. Realin Decl., ¶3; Decl. of Michael Bolds ("Bolds Decl."), ¶2.

Plaintiff alleges that Defendant required drivers to contact dispatch the evening before each shift to receive assignments, and that he routinely performed these communications without compensation. Realin Decl., ¶4; Bolds Decl., ¶3. Plaintiff further asserts that dispatch frequently added unscheduled trips during shifts, which at times resulted in missed, late, or interrupted meal and rest periods. He alleges that drivers were sometimes discouraged from reporting missed breaks and instead recorded them as compliant. Realin Decl., ¶5; Bolds Decl., ¶¶5-6. Plaintiff also claims that he was required to use his personal cell phone for work-related purposes, including communications and timekeeping, without reimbursement. Realin Decl., ¶6; Bolds Decl., ¶8. In addition, Plaintiff alleges that on certain occasions he reported to work but was provided only limited hours and did not receive reporting time pay. Realin Decl., ¶7; Bolds Decl., ¶7. Finally, Plaintiff contends that Defendant did not fully provide certain promised wages and retirement contributions, resulting in unpaid compensation. Realin Decl., ¶8; Bolds Decl., ¶4.

IV. VIGOROUS PROSECUTION OF THIS ACTION

A. Summary of Investigation and Discovery Conducted

The Parties carefully investigated the claims and facts alleged in this action, and Plaintiff made a thorough study of the legal principles applicable to the claims asserted against Defendant.

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Plaintiff received data points, and documents and policies to evaluate his claims. As a result of careful investigation of the claims in this action, the Parties had a clear understanding of their respective claims and defenses. Realin Decl., ¶9.

B. Settlement Reached with Assistance of Experienced Mediator

Plaintiff retained counsel with extensive experience in prosecuting wage and hour class actions. Decl. of Isam C. Khoury ("Khoury Decl."), ¶¶2-12; Decl. of Walter L. Haines ("Haines Decl."), ¶¶3-6. On February 24, 2026, the Parties mediated this case before Retired Judge Howard Broadman, a mediator experienced in wage and hour class actions. The case settled in principle. After additional months of arms'-length negotiations, the Parties finalized the terms of the settlement agreement. Realin Decl., ¶10; Khoury Decl., ¶ 14. The executed version of the Settlement Agreement is attached as **Exhibit A** to Khoury Declaration.

C. Summary of the Risks to Further Litigation

Plaintiff recognizes several risks to certification and succeeding on the merits in this action. As a preliminary matter, Defendant contends that Plaintiff signed an arbitration agreement, which, if enforced, would bar his wage and hour claims from being litigated in court. Realin Decl., ¶11.

With respect to Plaintiff's off-the-clock/unpaid wages claim, Defendant would likely contend that where an employer provides a means to record work time, the employer is entitled to rely on those time records, and is not required to audit other available records to ascertain if any off-the-clock work is occurring. *Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1051 ("that employees are clocked out creates a presumption they are doing no work"); *Hertz v. Woodbury County* (8th Cir. 2009) 566 F.3d 775, 781-782 (no duty to audit other available records); *Jong v. Kaiser Found. Health Plan, Inc.* (2014) 226 Cal.App.4th 391, 398-399 (same). Realin Decl., ¶12. Further, to the extent Plaintiff argues he has not received proper 401(k) benefits, Defendant would assert that such benefits do not constitute wages. *See* Lab. Code § 224.

Second, with respect to meal break claims, TransportUS's meal break policies appear facially lawful, and Plaintiff's records show he was paid substantial meal period premiums for non-compliant meal breaks. Accordingly, this evidence is likely insufficient to raise a presumption under *Donohue v. AMN Servs., LLC* (2021) 11 Cal.5th 58, 74. *See Smith v. 9W Halo W. OpCo L.P.* (N.D. Cal. Mar. 28,

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2025) 2025 U.S. Dist. Lexis 59497, **10-12 (3.7% shifts showing a missed second meal break insufficient to invoke the *Donohue* presumption). Realin Decl., ¶13.

Third, with respect to rest breaks, TransportUS's rest break policies appear facially lawful, and damages calculations could present complicated issues, as employees did not have to clock out to take rest breaks, or otherwise record them. Realin Decl., ¶14.

Fourth, with respect to Plaintiff's claim for unreimbursed cell phone expenses, Defendant will argue that company-issued cell phones were provided to all employees for purposes of accessing the timekeeping app. If a driver's assigned phone was not compatible with the app or dispatch system, the driver could obtain a replacement device from the on-duty dispatcher. Similarly, all necessary communication equipment, including cell phones, radios, and tablets, was supplied to driver personnel during the Class Period. Realin Decl., ¶15. Further, to the extent Plaintiff and other Class Members did not seek reimbursement of these expenses, this claim would be susceptible to summary judgment. *Hammit v. Lumber Liquidators* (S.D. Cal. 2014) 19 F. Supp. 3d 989, 1001 (granting summary judgment when employee failed to request reimbursement). Realin Decl., ¶15.

Fifth, with respect to reporting time claim, Defendant will argue Plaintiff and other Class Members received proper reporting time pay in the rare instances when they reported to work but were provided with no work. Realin Decl., ¶16.

Lastly, with respect to wage statement and untimely wages claims, they are derivative of Plaintiff's unpaid time and meal and rest break claims, so if Plaintiff does not prevail on the underlying claims, their derivative claims would also fail. *See Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 524-25. Also, Defendant will likely assert that wages that were not paid cannot form the basis of these derivative claims based on *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-37. Realin Decl., ¶17.

V. SUMMARY OF SETTLEMENT TERMS

A. Settlement Relief

Gross Settlement Amount:	$150,000, non-reversionary and non-claims made. Settlement Agreement ("SA"), ¶10.
Deductions from the Gross Settlement Amount:	• Attorneys' fees not to exceed one-third of the Gross Settlement Amount ($50,000);

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	• Out-of-pocket litigation costs not to exceed $15,000; • Service Payment to Plaintiff not to exceed $10,000; • PAGA penalties of $7,500 (of which 65% or $4,875 will be paid to the LWDA and 35% or $2,625 to Aggrieved Employees); • Administration costs of approximately $6,500. *Id.*, ¶¶11-14,
Net Settlement Amount:	Approximately $61,000. *See* i*d.*, ¶¶2.Z, 15.
Definition of the Settlement Class:	Current and former non-exempt employees of Defendant within the State of California at any time during the Class Period *Id.*, ¶¶2.C, 2.G.
Definition of Aggrieved Employees	Defendant's California non-exempt, hourly-paid drivers during the PAGA Period. *Id.*, ¶2.B.
Class Period	From May 27, 2021, through May 25, 2026, or the date the Court preliminarily approves the settlement, whichever is sooner. *Id.*, ¶2.J.
PAGA Period	From April 21, 2024, through May 25, 2026, or the date the Court preliminarily approves the settlement, whichever is sooner. *Id.*, ¶2.EE.
The number of Class Members and workweeks worked during the Class Period	211 Class Members; 11,034 workweeks. Realin Decl., ¶33; SA, ¶35.
The average individual settlement payment	$5.53 per workweek; or approximately $290 per Class Member (without accounting for the number of workweeks worked). Realin Decl., ¶31.

1. Settlement Formula and Distribution

Participating Class Members will receive their Settlement Payments from the NSA based on the number of workweeks they worked during the Class Period (SA, ¶15), calculated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

Id.

TransportUS will pay employer's side payroll taxes in addition to the Gross Settlement Amount. SA, ¶18. Class Members who do not opt out of the Settlement will release Defendant from all claims that relate to the causes of action asserted in this action – or those that could have been asserted in this action based on the facts alleged in Plaintiff's operative complaint. *See id.*, ¶19; *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 538-39.

Settlement checks will be valid and negotiable for 180 days. SA*,* ¶47. After that time, the Parties will seek the Court's approval to donate the funds represented by uncashed checks from the class action settlement fund, plus interest, to the California Controller's Unclaimed Property Fund in the name of the Class Member, leaving no "unpaid residue" subject to California Code of Civil Procedure section 384(b). *Id.*

All Settlement Payments are subject to taxation and will be reported to the IRS and state tax authorities. Twenty percent (20%) of each Class Member's settlement payment will be allocated as wages, and eighty percent (80%) will be allocated as penalties and interest, with withholding to apply only to the portion allocated to wages. SA, ¶17. This allocation is based on the nature of the claims asserted, including claims for unreimbursed business expenses and the fact that this matter involves a PAGA cause of action. In allocating a portion of the recovery to interest, the allocation also accounts for the statutory penalties available under Labor Code sections 226 and 203, as well as PAGA, and recognizes that reimbursements under Section 2802 do not constitute wages. Accordingly, the tax allocation is reasonable. Realin Decl., ¶18. Class Members shall seek their own tax advice regarding this Agreement. *Id.*

2. Attorneys' Fees and Costs

Subject to Court approval, up to $50,000 or one-third of the Gross Settlement Amount, may be allocated to attorneys' fees, and up to $15,000 to litigation costs and expenses. SA, ¶11. Courts in California wage and hour cases, where the common fund is under $10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491-92 (citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503. Class Counsel will brief the fee application using both methodologies, as cross checks.[2] Any portion of the requested attorneys' fees and costs not awarded to Class Counsel shall be part of the Net Settlement Amount to be distributed to Class Members. SA, ¶11.

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[2] 62.50% of the awarded attorneys' fees will be allocated to Cohelan, Khoury & Singer and 37.50% to United Employees Law Group. Khoury Decl., ¶15. The client approved this split in writing. *Id.*

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3. PAGA Payment to Labor Workforce Development Agency

The Parties agreed $7,500, or 5% of the Gross Settlement Amount, will be allocated for payment under PAGA. Of this amount, 65% ($4,875) will be paid to the LWDA, and 35% ($2,625) to Aggrieved Employees. SA, ¶14. The PAGA penalties under this Settlement represent over 4% of the total potential maximum PAGA penalties for Plaintiff's claims (1,852 pay periods within the applicable statute of limitations *$100 = $185,500 in total unstacked[3] PAGA penalties). Realin Decl., ¶19. The subsequent penalties should be calculated at $100, not $200 per pay period because under *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, for a plaintiff to recover $200 per subsequent violation an employer must have been cited first, which has not occurred here. *Id.* at 1207-09; *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal. App. 5th 334, 356 ("the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *see also Hernandez v. Best Buy Stores, LP* (S.D. Cal. June 6, 2017) 2017 WL 2445438, *2 (holding, based on *Amaral,* that $100 penalty per pay period is warranted because "no court, commissioner, or any other authority had held [that] Best Buy misclassified" the general managers.").

This allocation of the PAGA penalties falls within, or exceeds, the range of other approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 528 (awarding PAGA penalties of 0.2% of the maximum, or $5 per pay period); *Ruch v. AM Retail Grp., Inc.* (N.D. Cal. Sept. 28, 2016) 2016 WL 5462451, at *2, *7 (settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 WL 3670787, at *10 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP* (N.D. Cal. July 25, 2017) 2017 WL 3834873, at *2 (finding that "$7,500 PAGA payment is reasonable when measured against the total overall settlement [of $345,000] and the possible

[3] "California Law is unsettled as to whether PAGA penalties may be stacked, and…in the absence of binding appellate decision on this issue, courts have gone in different directions." *Merante v. Am. Inst. For Foreign Study, Inc.* (N.D. Cal. July 25, 2022) 2022 U.S. Dist. Lexis 131833 at *18.

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weaknesses in Plaintiffs' case."); *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal. App. 4th 1112, 1135-36 (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013) 2013 WL 10936035 at **2-3 (reducing penalty for past PAGA violations from $1.8 million to $500,000, after rejecting numerous other PAGA claims); *Merante*, 2022 U.S. Dist. Lexis 131833 at *19 (preliminarily approving a PAGA settlement amount representing between 0.27% and 2% of the maximum potential PAGA liability, noting that the adequacy of the PAGA recovery should be evaluated in the context of the accompanying class action settlement).

These PAGA penalties conform to the courts' reasoning that "[t]he remedy sought in a PAGA suit consists of civil penalties, not individual or class damages" [*Mendez v. Tween Brands, Inc.* (E.D. Cal. June 30, 2010) 2010 WL 2650571, at *4], and in PAGA "[u]nlike class actions, these civil penalties are not to compensate unnamed employees because the action is fundamentally a law enforcement action." *See Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 WL 1340777, at *4.

4. Settlement Administration Costs

The Parties selected Phoenix Settlement Administrators as the Settlement Administrator in this action. SA, ¶¶2.MM, 13. The Parties obtained bids from three settlement administrators, and Phoenix's was a competitive bid. Realin Decl., ¶20. The costs of the Administrator, estimated at $6,500, will be deducted from the Gross Settlement Amount. SA, ¶2.NN. The attached declaration of Michael Moore of Phoenix shows the qualifications and experience of the Administrator, procedures in place to protect the security of class data, the description of the notice procedure, and the anticipated costs of the notice. Phoenix Decl., ¶¶2-17, Exhibits A and B.

5. Service Payment to Class Representatives

Subject to Court approval, up to $10,000 from the Gross Settlement Amount will be paid as an incentive award to Plaintiff for his services as class representative. SA, ¶12. Any portion of the requested Service Payment not awarded to Plaintiff shall be part of the Net Settlement Amount to be distributed to Class Members. *Id.*

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B. Settlement Administration

Within 30 calendar days after the preliminary approval, Defendant will provide the Administrator with Class Data containing Class Members' contact information and sufficient information to determine the total number of workweeks/pay periods worked within the relevant time period. SA, ¶27. Within 14 calendar days thereafter, Phoenix will send Class Notice to each Class Member as provided in the Settlement Agreement, determine the eligibility for, and the amounts of, any Settlement Payments under the terms of this Agreement, process and distribute Class Members' payments, and process and mail tax payments to the appropriate state and federal taxing authorities. *Id.*, ¶28. Further, Class Members will also be able to contact the Settlement Administrator by telephone or e-mail, or access the settlement website,[4] if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. 1** to the Settlement Agreement. Also, any objections to or opt outs from the Settlement must be delivered to the Settlement Administrator. SA, ¶¶32-33.

VI. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA

There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for Justice v. Civil Serv. Comm'n of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. The trial judge exercises discretion in deciding whether to grant preliminary approval of a class action settlement and "great weight is accorded to [the] judge's views." *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. At this stage, a court limits its inquiry to the extent necessary to reach a reasoned judgment that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.

In approving a settlement where the class has not yet been certified, the court must first determine that a class exists. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 613, 619-20 (commonality must be shown at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

[4] The website will contain settlement-related documents, including notice of final judgment. Cal. Rule of Court, Rule 3.771(b).

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A. The Value of the Class Settlement is Reasonable (*Kullar* analysis)

Defendant's records indicate there are 11,034[5] workweeks worked by Class Members during the Class Period. SA, ¶35. The average hourly rate for Class Members is $18.81. Based on the analysis of the produced data, Defendant's maximum potential exposure is as follows:

<u>Unpaid wages/overtime:</u> **$155,910.42**. This is based on Plaintiffs' investigation that class members worked about half an hour off-the-clock every week. Thus, Defendant's exposure for unpaid time is as follows: 11,034 workweeks *$28.26 overtime rate x 0.5 hours = $155,910.42. Realin Decl., ¶21.

<u>Meal break premiums</u>: **$415,761.12**. After accounting for meal break premiums paid, the net violation rate averages approximately two noncompliant meal periods per workweek, so the exposure is as follows: 11,034 workweeks *2 * $18.84 = $415,761.12. Realin Decl., ¶22.

<u>Rest break premiums</u>: **$207,880**. Plaintiff estimates that non-exempt employees were unable to take rest breaks twice in a workweek, resulting in the following exposure: 11,034 workweeks *2 * $18.84 = $415,761.12. However, because rest breaks were not recorded, and Defendant's policies permit and authorize them, Plaintiff will discount this claim by 50%, resulting in a realistic exposure of $207,880.56. [6] Realin Decl., ¶23.

<u>Unreimbursed expenses</u>: **$28,260.** Plaintiff estimates a reasonable reimbursement for cell phone is $20 per month, for the duration of the 2,826 Class Period months (11,034 Class Period weeks / 4 weeks) * $20 = $56,520). Given the Defendant's position that Company cell phones were provided to class members, this claim should be reduced by 50%, resulting in a realistic exposure of

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[5] The agreement contains an escalator clause, which provides that if the number of workweeks equals or exceeds 12,138, Defendant has an option to either increase the GSA proportionately or agree to cut off the Class Period as of the date the number of workweeks is no more than 12,138. SA, ¶35.

[6] Settlements are routinely approved as fair and reasonable when the maximum valuation is discounted by fifty percent, or more, to account for the class certification and merits risks. *See e.g., Milburn v. PetSmart, Inc.* (E.D. Cal. Oct. 29, 2019) 2019 WL 5566313 *4 (approving settlement as fair and reasonable where plaintiff applied forty to fifty percent discount <u>each</u> for class certification and risks on the merits); *see also Galvan v. Superior Tank Co Inc.* (C.D. Cal. July 19, 2016) 2016 WL 11502115 *7 (approving settlement as fair and reasonable where maximum valuation was discounted for the risk of non-certification, i.e. the rest period claim was discounted *by 85% for a risk of non-certification and by 65% on the merits).*

$28,260. Realin Decl., ¶24.

Reporting time pay: $**106,483.68.** Plaintiff estimates employees reported to work without being provided with work about once a month. Thus, the reporting time pay calculations are as follows: 2,826 pay periods times $37.68 (2 hours x $18.84) = **$106,483.68**. Realin Decl., ¶25.

Wage statement penalties: **$180,800.** There are approximately 88 employees and 1,852 pay periods during the one-year statute of limitations for this claim. Thus, Defendant's exposure for this claim is as follows: $50 x 88 initial pay periods = $4,400; $100 x 1,764 subsequent pay periods (1,852-88) = $176,400, for a total of $180,800. This does not exceed the maximum $4,000 per employee ($180,800/88 = $2,054.54). Realin Decl., ¶26.

Waiting time penalties: **$556,156**. There are 123 former employees within the applicable limitations period. Thus, Defendant's exposure for this claim is as follows: 8 hours worked daily x 30 days x $18.84 x 123 employees = $556,156. Realin Decl., ¶27.

Thus, Defendant's maximum realistic liability for Plaintiff's direct claims is $914,295.00, and an additional **$736,956** for Plaintiff's derivative wage statement and waiting time penalties claims, possible only if Plaintiff prevailed on their underlying claims, for a total of $1,651,251.00. Thus, the Gross Settlement Amount of $150,000 represents **16.4%** of Defendant's maximum realistic liability for Plaintiff's direct claims, and 9.1% of Defendant's maximum realistic liability for all Plaintiff's claims. Realin Decl., ¶28. This result is well within the range of settlements commonly approved by California state and district courts. *Id. See also* Section IV(B)(2) below for a detailed explanation.

B. The Proposed Settlement is Fair, Adequate, and Reasonable

The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, *citing Officers for Justice*, 688 F.2d. at 625. The "fair, reasonable and adequate" test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 61. In the absence of California law, the court might follow the federal authority. However, California courts have never adopted Rule 23 as "a procedural strait jacket;" to the contrary, trial courts have been urged to be flexible in dealing with class actions. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240, *citing Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, n.16. Generally, the opinions of counsel should

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be given considerable weight because of counsel's familiarity with the litigation, and previous experience with cases such as this one. *Officers for Justice,* 688 F.2d at 625. "We note that… settlement [is] the preferred means of dispute resolution…especially in complex class action litigation." *7-Eleven Owners,* 85 Cal.App.4th at 1151.

At the preliminary approval stage, the Court considers if:

> (1) the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with the range of possible approval.

In re Tableware Antitrust Litig. (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079 (citing Manual for Complex Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations

This Settlement is the result of extensive and hard-fought negotiations. Realin Decl., ¶10. Class Counsel analyzed pre-mediation data and diligently investigated Class Members' claims. *Id.*, ¶29; Section III(A), *supra.* Class Counsel reviewed Defendants' policies and other documents and prepared a damages model. *Id.*, ¶29.

The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses of their respective positions. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 410 (approving settlement where "considerable information [exists] from which to assess the strength of the class claims" and litigation risks); *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116, 129-130 (trial court should have sufficient information about the potential value of the case and litigation issues to independently review the reasonableness of the settlement.).

Before this action settled, the Parties participated in a mediation session before a private neutral with experience in mediating wage and hour class actions. Realin Decl., ¶10; Section III(B), *supra*. That indicates the settlement was free of collusion. "The assistance of a well-respected mediator with substantial experience in employment litigation…supports approval of the settlement." *Murillo v. Pac. Gas & Elec. Co.* (E.D. Cal. 2010) 266 F.R.D. 468, 479; *Dunk,* 48 Cal.App.4th at 1802-03.

The Parties have been cooperative, yet aggressive, and displayed capable and experienced advocacy on both sides. Accordingly, "[t]here is … every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, 1392.

2. *The Settlement has no "Obvious Deficiencies" and Falls within the Approval Range*

"[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton* (5th Cir. 1977) 559 F.2d 1326, 1330). Thus, when evaluating the amount offered in settlement, the Court should consider "the complete package taken as a whole," and the amount should "not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id.* at 625-28.

(i) The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements

Courts routinely approve class action settlements where the settlement amount is a lower percentage of the claimed amount of damages. *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013) 2013 WL 12371622, at *6 (granting final approval in wage and hour action for settlement between 4.4% and 5% of maximum liability); *In re MyFord Touch Consumer Litig.* (N.D. Cal. Mar. 28, 2019) 2019 WL 1411510, at *10 (6% of valuation); *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2014) 303 F.R.D. 611, 623-24 (settlement between 9% and 27% of total potential liability fair, adequate and reasonable given the uncertainty of continued litigation); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) 2015 WL 3776765, at *4 (approving settlement representing 10% of potential value). Simply put, "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean that [it] should be disapproved." *7-Eleven Owners*, 85 Cal.App.4th at 1150, citing *Linney v. Cellular Alaska P'ship* (9th Cir. 1998)151 F.3d 1234, 1242.

Here, the Settlement represents approximately 16.4% of Defendant's maximum potential liability for Plaintiff's direct unpaid time, meal and rest break, reporting time, and 2802 claims, and 9.1% of Defendant's maximum realistic liability for all Plaintiff's claims, without any risks, costs, and uncertainty of prolonged litigation. Realin Decl., ¶30. Without accounting for the length of each Class Member's employment with TransportUS, a Class Member will recover about $290 as a result of this settlement, or over $5.50 per workweek. *Id.*, ¶31. Based on the average hourly rate of $18.81,

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this amounts to recovery of <u>over 15 hours of wages per Class Member</u>. *Id.* This is an excellent result. *See e.g.*, *Villegas v. J.P. Morgan Chase $ Co.* (N.D. Cal. Nov. 20, 2012) 2012 U.S. Dist. Lexis 166704, at *7, *23 (preliminarily approving settlement with approximately $255 settlement payment per class member).

(ii) The Formula of Allocation based on Workweeks is Fair and should be Approved

Class Members will receive a portion of the Gross Settlement Amount based on the number of workweeks they worked for TransportUS during the Class Period. This formula is realistic because Class Members' individual recovery is proportionate to the amount of time the Class Members were employed with Defendant. Realin Decl., ¶32. As discussed in Section III(C), *supra*, considering lengthy litigation in the absence of a settlement, the risk that Plaintiff and the Class Members might not have been able to succeed at trial, and the risk that the court could award less than $150,000 in damages, the settlement amount is reasonable. *In re Mego Fin. Corp. Sec. Litig.* (9th Cir, 2000) 213 F.3d 454, 458; *Sandoval v. Tharaldson Employee Mgmt.* (C.D. Cal. June 15, 2010) 2010 WL 2486346, at *7.

3. The Settlement does not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class

Class Representative Michael Bolds will receive up to $10,000 for his time and efforts in representing the Class. SA, ¶12. "Incentive awards [for class representatives] are fairly typical in class actions." *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393, citing *Rodriguez v. West Publ'g* (9th Cir. 2009) 563 F.3d 948, 958. California courts agree that a class representative is entitled to such an award. *Cellphone Termination,* 186 Cal.App.4th at 1394. "Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable." *Clark v. Am. Residential Servs.* (2009) 175 Cal.App.4th 785, 804, citing *Matter of Cont'l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571.

Here, the service payment to Plaintiff is based on the extent of his participation in this action and not conditioned upon Plaintiff's support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.* (2013) 715 F.3d 1157, 1165. Plaintiff assisted in investigation, participated in multiple conference calls with counsel, provided and reviewed documents and pleadings, and was on standby during mediation. *See* Bolds Decl., ¶¶13-15.

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Courts award incentive awards in this range. *Ross v. U.S. Bank Nat'l Ass'n* (N.D. Cal. Sept. 29, 2010) 2010 WL 3833922, at *3 (approving an award of $20,000 to each of four named plaintiffs based on their contributions to litigation and the risk that being a class representative would harm their reputation); *see also Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal., Sept. 14, 2017) 2017 WL 4071293, at *19 ($15,000 incentive awards for each of the named plaintiffs awarded); *Low v. Trump University, LLC* (S.D. Cal. 2017) 246 F.Supp.3d 1295, 1316 ($15,000 incentive award approved where plaintiffs "devoted significant amounts of time and energy" to the action); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 WL 221862 at *17 ($25,000 for each class representative in wage and hour action). Thus, the proposed service payment is reasonable.

4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval of the Settlement

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D. 523, 527.

Here, before settling this action, the Parties had a thorough understanding of their respective claims and defenses. *See* section III(A), *supra*; Realin Decl., ¶29. Before mediation, Class Counsel investigated Class Members' claims, examined documents and data, and performed damage calculations. *Id.* At the time the Parties engaged in mediation, they knew and understood their respective positions. *Id.* As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the Settlement with TransportUS is fair, reasonable, adequate, and in the best interest of the Class. *Young v. Polo Retail, LLC* (N.D. Cal. Mar. 28, 2007) 2007 WL 951821, at *4.

VII. The Class Meets the Qualifications for Certification for Settlement Purposes[7]

To prevail on a motion for class certification, Plaintiff needs to show that "the question is one of a common or general interest, of many persons, or…the parties are numerous, and it is impracticable to bring them all before the court." Cal. Code of Civ. Proc. § 382. Plaintiff needs to

[7] TransportUS agrees to certify a class for settlement purposes only, and its agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. SA, ¶23.a.

prove that the class is both ascertainable and that there is a well-defined community of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 326. In *Sav-On Drug Store*, the court adopted a test for "community of interest," which consists of the following prongs: (1) there are predominant common questions of law or fact; (2) class representatives have claims typical to those of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

A. Ascertainability and Numerosity Exist that can be Determined from Payroll Records

A class is generally considered ascertainable when: (i) under the class definition the members are clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of time and money. *See Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274-75; *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919-20. Typically, class members are ascertainable when they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc.* (2011) 195 Cal.App.4th 807, 828; *Sevidal*, 189 Cal.App.4th at 919.

Here, the Class is composed of approximately 211 current and former non-exempt drivers of Defendant in California, who can be identified and located from Defendant's personnel and payroll records. Realin Decl., ¶33. In California, as few as ten (10) or twenty-eight (28) members satisfy numerosity. *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030. Thus, numerosity is satisfied, and the class is ascertainable.

B. Common Issues of Law and Fact Predominate over any Individual Issues

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Brinker,* 53 Cal.4th at 1022. The court only determines whether or not "the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." *Sav-On Drug Stores*, 34 Cal.4th at 327.

Here, there are common questions of law and fact that apply to class members across the board, and they predominate over any individual inquiries, in that "determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-*

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Mart Stores, Inc. v. Dukes (2011) 131 S.Ct. 2541, 2551. Those questions include: (i) Whether or not Class Members were required to work off-the-clock; (ii) Whether or not Class Members were not provided with meal and rest breaks; (iii) whether or not Class Members were paid reporting time pay, (iv) whether or not Class Members were reimbursed necessarily incurred business expenses; (v) Whether or not Class Members were provided with all wages due upon separation under Labor Code section 203; (vi) Whether or not Class Members were provided with accurate wage statements as required by Labor Code section 226; (vii) Whether or not Defendant engaged in unfair business practices in violation of the UCL. *See also* Bolds Decl.., ¶¶3-10, attesting that his claims are common to the claims of the absent Class Members.

Because several issues are common to all Class Members, a class action is superior to numerous individual actions, and the maintenance of this action as a class action will save judicial resources, and help avoid inconsistent judgments. *See Savon Drugs*, 34 Cal.4th at 326 Class Members' interests are relatively small, so they are unlikely to prosecute separate actions. Plaintiff's claims arise from his employment with Defendant in California.

C. Plaintiff's Claims are Typical of the Claims of Class Members

Typicality does not mean that the interests of representative plaintiffs must be identical to those of the absent class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46; *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 957. They only need to be "reasonably co-extensive with those of absent class members." *Parsons v. Ryan* (9th Cir. 2014) 754 F.3d 657, 685. Further, the representative plaintiff must be a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 875.

Here, Plaintiff's claims arise from the same facts and legal theories as the Class Members' claims. Plaintiff was subject to the same wage and hour policies and practices of Defendant. Thus, typicality is met.

D. Plaintiff and Class Counsel will Adequately Protect the Interests of the Class

The adequacy of representation involves two conditions: the named plaintiff must be represented by counsel qualified to prosecute class actions of this type; and the named plaintiff's interests cannot be antagonistic to those of the class. *See McGhee v. Bank of America* (1976) 60

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Cal.App.3d 442, 450.

Here, Plaintiff retained counsel with extensive experience in prosecuting wage and hour class actions. Khoury Decl., ¶¶2-12; Haines Decl., ¶¶3-6. In addition, Plaintiff has the same interests as the rest of the Settlement Class, because he was allegedly injured in substantially the same manner. Bolds Decl., ¶¶9-10. Thus, the Court should certify Plaintiff's class claims for Settlement purposes.

VIII. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED

A. Proposed Notice Plan

Within 14 calendar days after receiving class data from Defendant, the Settlement Administrator will send Class Notice to Class Members via first class mail. SA, ¶28. Before mailing the Notice, the Settlement Administrator will run a check of the Class Members' addresses against those contained in the USPS's National Change of Address database and take any other appropriate steps to validate the correctness of the addresses provided by Defendants. *Id.* If the Notice is returned with the forwarding address, the Settlement Administrator will use the forwarding addresses to locate the missing Class Members, and re-mail the Notice to the correct address. *Id.*, ¶29. If a Notice is returned as non-deliverable with no forwarding address, the Settlement Administrator shall conduct an advanced skip trace to locate the most current address of the person to whom the Notice was addressed and shall resend the Notice to any updated address within five (5) calendar days. *Id.* Any responses from the Class Member (*i.e.*, a dispute regarding calculation of workweeks, a Request for Exclusion, or an objection) are due to the Administrator within 60 days of the notice mailing, as defined in the Settlement Agreement, or within fifteen (15) days from the date of re-mailing, whichever is later. *Id.*

The Class Notice will summarize the terms of the Settlement Agreement, advise the Class Members of their estimated individual settlement payment, and inform Class Members of their right to object to or exclude themselves from the Settlement within 60 days after the Notice mailing. SA, **Ex. 1**. Because this is the California-only class, and the mailing will occur only in California, 60 days to opt out from or object to the Settlement is sufficient. Realin Decl., ¶34. Further, because Class Members communicated with co-workers and supervisors on a daily basis in English, English-only notice is sufficient. *Id.*, ¶35.

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B. The Proposed Notice to the Class is Fair and Adequate

The Parties agreed on the language of the proposed class notice. Realin Decl., ¶34. The threshold requirement regarding the sufficiency of class notice is whether the means proposed for distributing the notice are reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the right to opt out of or object to the settlement. *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173; *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 315; *see also* Cal. Rules of Court, Rule 3.766.

Here, the Notice is more than sufficient, because it gives Class Members, in an easy to understand and clear language: (1) basic information about this action and the Settlement; (2) an estimate of the weeks Class Members worked during the Class Period, and an explanation how Class Members can dispute this calculation; (3) an explanation how the payout from the Settlement will be calculated for each Class Member, and an estimate of a Class Member's Settlement Payment; (4) an explanation how Class Members can exercise their right to opt out from, or object to, the Settlement; (5) an explanation that any claims against Defendant that could have been litigated will be released if the Class Member does not opt out; (6) name of Class Counsel and information regarding attorneys' fees and costs; (7) the date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing; and (8) the telephone and e-mail number, as well as website address, where class members can obtain additional information. *See* Ex. 1 (proposed Class Notice).

Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the California Rules of Court, Rules 3.766 and 3.769(f).

IX. CONCLUSION

Plaintiff's unopposed motion should, respectfully, be granted.

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Dated: April 30, 2026

By:______________________

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