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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

VICTOR PALMA, VICTOR VILLASENOR,
AND LUIS MALDONADO, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

TEAM ALLIANCE LOGISTICS INC., a
California corporation; MTK
TRANSPORTATION INC., a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

CASE NO. 22STCV40081

Complaint Filed: 12/22/2022

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES THEREON**

Hearing

Date: November 20, 2024

Time: 10:30 a.m.

Judge: Honorable Stuart M. Rice

Dept.: 1, Spring Street Courthouse

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on November 20, 2024, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 1 of the Los Angeles County Superior Court for the State of California, located at the 111 North Hill Street, Los Angeles, CA 90012 before the Honorable Stuart M. Rice, Plaintiffs Victor Palma, Victor Villaseñor and Luis Maldonado ("Plaintiff"), through his undersigned Class Counsel, will and hereby does move the Court for

an order:

1. Finally certifying the Class, as defined in the Class Action and PAGA Settlement Agreement (the “Settlement Agreement”) between Plaintiff and Defendants Team Alliance Logistics, Inc. (“Defendants”) and the Court’s July 29, 2024 Order Granting Preliminary Approval of Class Action Settlement;
2. Finally appointing Plaintiffs Victor Palma, Victor Villasenor and Luis Maldonado as Class Representatives for purposes of settlement;
3. Finally appointing James M. Treglio of Potter Handy LLP., as Class Counsel for purposes of settlement;
4. Finding that notice of the settlement was properly provided to the Class in accordance with the Court’s Order Granting Preliminary Approval of Class Action Settlement;
5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement, including the allocation for attorneys’ fees and costs, settlement administrator expenses, and the class representative payment to Plaintiff;
6. Binding all Class Members to the terms of the Settlement Agreement, including the Release specified therein; and
7. Retaining jurisdiction to enforce the Settlement Agreement for one year from the effective date of the settlement to enforce the terms of the settlement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support of Final Approval; the declarations submitted herewith; the Court’s Order Granting Preliminary Approval of Class Action Settlement; the Declaration of James M. Treglio in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement; the Declaration of Marvin Osoy in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement, the other records, pleadings, and papers filed in this action; and upon such other arguments as may be presented to the Court.

As this motion is unopposed, Plaintiffs respectfully request relief from the page limit requirement under California Rules of Court, Rule 3.1113(d).

Respectfully submitted,

POTTER HANDY LLP

Dated: November 1, 2024

/s/ James M. Treglio
James M. Treglio, Esq.
Attorney for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks final approval of a wage-and-hour class action settlement (the “Settlement”) for the non-reversionary Gross Settlement Amount (“GSA”) of \$300,000.00 between Plaintiff (“Plaintiff”) and Defendant Team Alliance Logistics, Inc. (“Defendants”) (collectively the “Parties”) for a settlement class of 33 current and former employees, *who worked as drivers or in any similar capacity from December 22, 2018 through July 29, 2024* (“the Class” or “Class Members”).

Under the terms of the Settlement, if the Court grants final approval to the settlement, 33 Class Members will share 100% of the Net Settlement Amount, and none objected to the terms of the settlement. If the Court grants final approval to the proposed settlement, the following chart sets forth the allocation of the Gross Settlement Amount (“GSA”) pursuant to the Settlement Agreement:

Monetary Component of Settlement	\$300,000.00
Attorneys’ Fees (1/3 of the TSV)	(\$99,999.00)
Litigation Costs	(\$10,000.00)
Claims Administration Costs	(\$7,909.00)
Service Awards to Class Representatives	(\$15,000.00)
PAGA payment to the LWDA	(\$17,437.50)
PAGA payment to PAGA Members	(\$5,812.50)
Net Payments to Class Members	\$143,842.00

As discussed below, following the distribution of the Class Notice to the Class, there were no objections and no requests for exclusion to this settlement. This is an excellent response from the Class raising the strong presumption that the Settlement is fair, reasonable, adequate, and in the best interest of the Class Members. All Participating Class Members will receive settlement awards if the Court grants final approval, with an average payment of \$4,230.65 – truly excellent results for a case of this type, as evidenced below.

Not surprisingly, *every single member of the Class has chosen to participate in this settlement, as not a single Class Member opted out or objected*, a significant factor that

demonstrates the Class unanimously approves of the terms of the Settlement, which the Court has already previously found to be “fair, reasonable, and adequate” in its July 29, 2024 Order Granting Preliminary Approval of Class Action Settlement.

Furthermore, the Settlement (1) is the product of arms-length negotiations culminating in a full-day mediation with experienced mediator Steve Rottman. (2) was negotiated by experienced class action attorneys during the course of negotiations and significant document and data exchanges, (3) was reached after undertaking sufficient investigation necessary to evaluate the relative strength and value of the class’s claims as well as Defendants’ legal and factual defenses, and (4) reflects a reasoned compromise based directly on the relative strength and value of the class’s claims, as well as the risks, expense, complexity and likely duration of further litigation. As described in further detail below, the Class Notice was disseminated in accordance with the notice plan described in the Settlement Agreement and the Court’s Preliminary Approval Order. (Declaration of James M. Treglio in Support of Plaintiffs’ Motion for Final Approval (“Treglio Decl.”), ¶ 6); (Declaration of Gillian McCreedy with Respect to Settlement Administration and Class Notice (“Gillian Decl.”), ¶¶ 4 - 8). As noted, it is hard to imagine a more positive response from Class Members, with not a single Class Member objecting to any aspect of the Settlement, and no exclusion and all 33 Class Members receiving a Settlement Share. Further, none of the settlement funds will revert to Defendants.

Class Counsel is seeking final approval of attorneys’ fees in the amount of one-third of the Gross Settlement Amount, which is a reasonable fee for a wage and hour class action as a percentage of the common fund and within the normal range of attorneys’ fee awards in similar class actions in California courts and in Los Angeles County.

Based upon the foregoing, Plaintiffs respectfully request that the Court issue an Order that (1) the Settlement be finally approved; (2) Plaintiffs be appointed as Class Representatives; (3) Plaintiffs’ attorneys be appointed as Class Counsel, and (4) that the payment amounts as set forth in the proposed Order Granting Final Approval of Class Action Settlement be approved.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. NATURE OF THIS ACTION AND THE SETTLEMENT

1 Defendants are companies that provide complete port-to-door/ door-to-port transportation
2 and delivery services. Defendants utilize drivers, such as the Plaintiffs, to provide delivery services
3 to Defendants' Customers. ("Complaint") at ¶ 12.

4 According to the information supplied by defense counsel to the Settlement Administrator,
5 the Class here consists of 33 total class members. Treglio Decl. ¶ 5.

6 On December 22, 2022, Plaintiff filed his complaint before the Superior Court for the
7 County of Los Angeles. The First Amended Complaint alleges causes of action for (1) willful
8 misclassification (Labor Code Section 226.8, 2698, et seq); (2) failure to pay separately and hourly
9 for time spent by drivers on rest periods and non-productive time (Labor Code Sections 1194,
10 1194.2); (3) failure to provide paid rest breaks and pay missed rest break premiums (Labor Code
11 Sections 226.7; IWC Wage Order No. 9); (4) failure to provide meal periods and pay missed meal
12 period premiums (Labor Code sections 226.7, 512, IWC Wage Order No. 9); (5) failure to
13 reimburse business expenses (Labor Code section 2802); (6) failure to pay all wages owed in a
14 timely manner (Labor Code Section 204); (7) failure to provide complete wage statements (Labor
15 Code Sections 226 and 226.3); (8) waiting time penalties (Labor Code Sections 201-203); (9)
16 unlawful termination (Labor Code Section 1102.5); (10) PAGA and other penalties (Labor Code
17 Sections 2698-2699.5); and (11) unfair competition in violation of California Business &
18 Professions Code Section 17200, et seq. On March 25, 2024, Plaintiff subsequently amended his
19 Complaint to include Defendant MTK Transportation, Inc. to reflect the terms of the settlement.

20 On July 14, 2023, the Plaintiffs and Defendants attended a mediation before Steve Rottman
21 which led to this Agreement to settle the Action. Finally, the Parties were able to execute the long
22 form Settlement Agreement now before the Court for preliminary approval.

23 The parties engaged in extensive exchanges of informal discovery prior to reaching a fair
24 settlement in this matter. Accordingly, sufficient information existed to allow Class Counsel to act
25 intelligently in valuing this case and, given the parties' arms' length bargaining at mediation, the
26 extensive exchange of informal discovery, the experience of Class Counsel, the lack of objections,
27 and no objectors, and the presumption of fairness clearly applies. Based on comparison with other
28 settlements of similar cases and claims, Class Counsel maintains the settlement as fair, reasonable,

1 and adequate, and in best interest of the Class. Treglio Decl. ¶ 12.

2 On July 29, 2024, this Court entered an order preliminarily approving the Settlement
3 Agreement. The Court preliminarily approved the requested payment to the Class Representatives
4 in the amount of \$5,000.00 each; attorney’s fees up to one-third of the Gross Settlement Amount
5 (\$99,999.00) and litigation costs up to \$10,000.00. The Court also conditionally certified, for
6 purposes of settlement, a class of “*persons who worked as drivers or in any similar capacity for*
7 *Defendant from December 22, 2018 through July 29, 2024.*” Treglio Decl. ¶ 3.

8 **B. THE NOTICE PROCEDURES IN THE PRELIMINARY APPROVAL ORDER WERE**
9 **SATISFIED AND IMPLEMENTED**

10 In its Preliminary Approval Order, the Court approved the Notice of Proposed Class Action
11 Settlement And Hearing Date For Court Approval (the “Class Notice”), which were attached as
12 Exhibits A to the Settlement Agreement, which describe the basic terms of the Settlement and the
13 rights of Class Members to participate in the Settlement, to opt out of it, and to object to the
14 settlement, or if they wish, to challenge their weeks-worked, and instructions on how to appear and
15 be heard at the final approval and fairness hearing. (See PA Order, at ¶ 4-7). The Court also held
16 that the Class Notice met the requirements of due process and provided the best notice practicable
17 under the circumstances and constituted due and sufficient notice to all persons entitled thereto. *Id.*
18 at ¶ 7.

19 The procedures for disseminating notice to the Class Members established by the Order
20 Granting Preliminary Approval have been fully and properly executed. McCreedy Decl. ¶¶ 4 - 8.
21 On August 21, 2024, counsel for Defendant provided the Settlement Administrator with a class data
22 list containing each Class Member’s name, last known address, and dates of employment.
23 McCreedy Decl. ¶ 5. The mailing list contained 33 Class Members. Lee Decl. ¶ 8. The Settlement
24 Administrator was charged with (a) establishing and maintaining a related settlement fund account;
25 (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c)
26 processing and mailing payments to the Plaintiffs, Class Counsel, Participating Class Members, and
27 PAGA Members; (d) printing and mailing the Notice of Proposed Class Action Settlement and
28 Hearing Date for Court Approval (“Class Notice”) to Class Members and PAGA Members in

English and Spanish; (e) receiving and validating Requests for Exclusion, Objections, and Workweek Challenges submitted by Class Members and PAGA Members; (f) calculating employer payroll taxes and contributions on the wages portion of Individual Class Payments (“Employer Taxes”) and providing appropriate forms and calculations to Defendant; (g) mailing Individual Class Payment checks to Participating Class Members and Individual PAGA Payment checks to PAGA Members, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris to perform. McCreedy Decl. ¶ 3.

The Settlement Administrator processed and updated the mailing addresses contained in the Class list by utilizing the National Change of Address Database (“NCOA”) maintained by the US Postal Service. *Id.* at ¶ 7. A search of this database provides updated addresses for any individual who has moved in the previous for years and has notified the U.S. Postal Service of his or her change of address. *Id.* In the event that any individual had filed a US Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of that Class Notice. *Id.* Simpluris was able to locate thirteen (13) updated addresses using NCOA prior to the mailing of the Class Notice. *Id.*

On September 6, 2024, the approved Notice was mailed via First-Class U.S. Mail to the individuals identified as Class Members on the Class Data List. *Id.* at ¶ 8. As of October 29, 2024, zero Notices were undeliverable. *Id.* at ¶ 9.

The Settlement Administrator received zero objections (*Id.* at ¶ 14), and zero opt-outs (*Id.* at ¶ 13). **Since the Settlement Administrator received zero requests for exclusion, the Settlement has a 100% participation rate.** *Id.* at ¶ 10. It is hard to imagine a more favorable response to a Settlement.

C. THE CLASS MEMBERS UNANIMOUSLY APPROVE OF THE SETTLEMENT, WHICH IS FAIR AND REASONABLE

The response of the Class members has been positive:

- The Settlement Administrator mailed the Notice Packet to 33 Class Members. After remailing, **no notice packets were undeliverable.** *Id.* at ¶ 8.
- **No Class Members objected** to the Settlement. *Id.* at ¶ 14.

1 **No Class Members requested to be excluded** from the Settlement. *Id.* at ¶ 13.

2 ➤ There are a total of 33 Participating Class Members, a 100% participation rate, and
3 all of **those 33 Participating Class Members will share 100% of the Net**
4 **Settlement Amount.** *Id.* at ¶ 10. None of the Net Settlement Amount will revert to
5 Defendant. *Id.*

6 ➤ The average individual settlement payment is currently estimated to be \$4,230.65.
7 The highest Individual Settlement Share to be paid is approximately \$15,266.25, *Id.*
8 at ¶ 18.

9 ➤ There are twenty-eight (28) Aggrieved Employees during the PAGA Period.
10 The highest Individual PAGA Payment to be paid is approximately \$580, and
11 the average Individual PAGA Payment to be paid is approximately \$207.59.

12 Thus, the Class' response to the Settlement fully supports a Court Order granting final approval to
13 the Settlement.

14 **III. THE SETTLEMENT SHOULD BE FINALLY APPROVED AS IT MEETS**
15 **ALL CRITERIA FOR FINAL APPROVAL**

16 **A. STANDARD OF REVIEW**

17 Pursuant to the applicable Rules of Court, “[a] settlement or compromise of an entire class
18 action . . . requires the approval of the court after hearing.” *See* Cal. R. Ct. 3.769(a) The procedures
19 for submission of a proposed settlement for final approval are set forth in California Rule of Court
20 3.769(g) – entitled “Conduct of final approval hearing” – which provides that “[b]efore final
21 approval, the court must conduct an inquiry into the fairness of the proposed settlement.” *See* Cal.
22 R. Ct. 3.769(g).¹ Importantly, “[t]he [court’s] inquiry ‘must be limited to the extent necessary to
23 reach a reasoned judgment that (1) the agreement is not the product of fraud or overreaching by, or
24 collusion between, the negotiating parties, and (2) that the settlement, taken as a whole, is fair,
25 reasonable and adequate to all concerned.’” *See Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576,

26 _____
27
28 ¹ Thereafter, Rule 3.769(h) provides that “[i]f the court approves the settlement agreement after the final approval
hearing, the court must make and enter judgment” which “must include a provision for the retention of the court’s
jurisdiction over the parties to enforce the terms of the judgment.” *See* Cal. R. Ct. 3.769(h.)

581 (2010).

With regard to the first consideration (i.e. the underlying basis giving rise to the agreement), it is generally accepted that “[a] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” See *Id.* at 581; *Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1389 (2010).

With regard to the second consideration (i.e. the reasonableness and adequacy of the settlement), “the trial court should consider relevant factors, which may include, but are not limited to (1) ‘the strength of [the] plaintiffs’ case, (2) the risk, expense, complexity and likely duration of further litigation, (3) the risk of maintaining class action status through trial, (4) the amount offered in settlement, (5) the extent of discovery completed and the stage of the proceedings, (6) the experience and views of counsel, (7) the presence of a governmental participant, and (8) the reaction of the class members to the proposed settlement.” See *Cellphone Fee Termination Cases*, *supra*, 186 Cal. App. 4th at 1389; *Nordstrom Comm’n Cases*, *supra*, 186 Cal. App. 4th at 581; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 407 (2010).²

While it is generally accepted that “[t]he most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement,” *Munoz*, 186 Cal. App. 4th at 407–08, a court must be mindful that its function in such valuation is limited solely to determining whether the settlement falls within the *range* of acceptable settlements under the circumstances. See *Id.* at 409 (rejecting contention that a finding of fairness requires “[an] explicit statement of value” but rather, only “requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’”). Indeed, “[t]he proposed settlement is **not** to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial,” *Wershba v. Apple Computer, Inc.*, 91 Cal. App.

² Of course, “[n]ot all of these factors will apply to every class action settlement” and “[u]nder certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval.” See *Nat’l Rural Telcomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004).

1 4th 224, 246 (2001), and it is well established that “[t]he merits of the underlying class claims are
2 not a basis for upsetting the settlement of a class action.” *See 7-Eleven Owners for Fair Franchising*
3 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1150 (2001); *Wershba, supra*, 91 Cal. App. 4th at 246.

4 “[D]ue regard ... should be given to what is otherwise a private consensual agreement
5 between the parties.” *See Cellphone Fee Termination Cases, supra*, 186 Cal. App. 4th at 1389;
6 *Nordstrom Comm’n Cases, supra*, 186 Cal. App. 4th at 581. “[T]he operative word is ‘settlement,’”
7 *7-Eleven Owners*, 85 Cal. App. 4th at 1150, and “[c]ompromise is inherent and necessary in the
8 settlement process.” *See Wershba*, 91 Cal. App. 4th at 250. Importantly, “[p]ublic policy generally
9 favors the compromise of complex class action litigation.” *Nordstrom Comm’n Cases, supra*, 186
10 Cal. App. 4th at 581.

11 The Court may appropriately infer that a class action settlement is fair, adequate, and
12 reasonable when, among other reasons, few or no class members object to it. *See Class Plaintiffs v.*
13 *City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *Williams v. Costco Wholesale Corp.*, 2010 WL
14 2721452, at *5 (S.D. Cal. July 7, 2010) (“The absence of any objector strongly supports the fairness,
15 reasonableness, and adequacy of the settlement.”); *Nat’l Rural Telecomms. Coop. v. DIRECTV,*
16 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“The absence of a single objection to the Proposed
17 Settlement provides further support for final approval of the Proposed Settlement”). The total
18 absence of any objections and opt-outs here raises a strong presumption that the terms of the
19 proposed class settlement action are favorable to the class members. The Court should therefore
20 construe the favorable response by the Class, the lack of any objectors and opt-outs to the Settlement
21 by the Class are strong indicators that the Class Members themselves view the Settlement as fair,
22 adequate and reasonable. The Court should begin its analysis with the presumption that the
23 Settlement is fair and should be approved.

24 **B. THE SETTLEMENT MEETS ALL FINAL APPROVAL STANDARDS**

25 Applying the above factors, the proposed settlement embodies all of the key features of a
26 settlement that is fair, reasonable, adequate, and in the best interests of the members of the class,
27 and as such, meets all the criteria necessary for final approval.
28

1 **1. The Settlement was Reached Through Arms-Length Bargaining**

2 The Court has already preliminarily approved the Settlement Agreement, which was the
3 product of extensive arm's length and comprehensive negotiations between very experienced
4 attorneys for Plaintiffs and the Defendants and a full day mediation session with experienced
5 mediator Steve Rottman. Plaintiff will not reiterate all of the evidence and legal arguments
6 establishing that the Settlement Agreement and the negotiation process that led up to the Court
7 making a factual finding that it is fair and adequate, which are set forth in detail in Plaintiffs' Motion
8 for Preliminary Approval, the Declaration of James M. Treglio in support of that motion, and in the
9 Court's Preliminary Approval Order. However, it is important to note that the Settlement was
10 negotiated at arm's-length through settlement discussions between experienced attorneys and the
11 Court determined that the settlement terms set forth in the Settlement Agreement "appear to be fair,
12 adequate and reasonable to the Class." See PA Order, ¶ 1.

13 **2. Investigation and Discovery Was Sufficient For Counsel and the Court**

14 The settlement ultimately reached by the parties was the product of Class Counsel's review
15 of an extensive body of information, documents, and damages calculations based thereon.
16 Defendants' counsel provided Plaintiffs' counsel with documents and data responsive to Plaintiffs'
17 informal discovery requests, the data included, *inter alia*, information regarding time records, wage
18 statements, MTK drive handbook and driver manifest sheets. Treglio Decl. ¶ 10. Based on the
19 foregoing data, information and documents, Class Counsel was able to calculate estimated potential
20 damages for the Class and also take into account Defendant's defenses and the various discounts
21 applied to the potential damages for purposes of settlement negotiations. *Id.*

22 **3. Class Counsel is Experienced in Similar Litigation**

23 Both Plaintiffs' and Defense' Counsel are experienced class action and employment
24 attorneys, and have used their experience and expertise in fashioning a Settlement Agreement that
25 is acceptable to both parties. Treglio Decl. ¶¶ 20 – 23.

26 **4. No Class Member Objected to, Or Opted Out of, the Settlement**

27 As explained above, there were no opt-outs and no objections to the Settlement, which
28 demonstrates that Class Members approve of the terms of the settlement. McCreedy Decl. ¶¶ 13,

14. The total number of workweeks are 1,696 workweeks during the Class Period. McCreedy Decl. ¶ 6. This is a favorable result, with 100% of the Net Settlement Amount to be distributed and none of the settlement funds reverting to Defendant. *Id.* Courts have approved class settlements with far lower participation rates. *See, Anderson v. Nextel Retail Stores, LLC*, 2010 WL 8591002, at *17 (C.D. Cal. Apr. 12, 2010) (commenting favorably, as indicia of class member approval of the settlement, on claim-filing rate of 27%); *Stuart v. Radioshack Corp.*, 2010 WL 3155645, at *4 (N.D. Cal. Aug. 9, 2010) (granting final approval to settlement where 12.54% of class claimed 31.88% of the net settlement fund).

C. THE CLASS NOTICE PROCESS WAS ADEQUATE TO SATISFY DUE PROCESS

The Court-approved Class Notice, and the notice process described above have adequately protected the due process rights of the absent Class Members. Class action rules require the class notice to contain an “explanation of the proposed settlement and procedures for Class Members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” Cal. Rules of Court 3.769(f). The notice must contain the information set forth in California Rule of Court 3.766(d). Notice of a class action settlement is adequate where notice is given in a “form and manner that does not systematically leave an identifiable group without notice.” *Mandujano v. Basic Vegetable Prods, Inc.*, 541 F.2d 832, 835 (9th Cir. 1976). The notice should be the best “practicable under the circumstances including individual notice to all members who can be identified through reasonable effort.” *Torrisi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993). “The standard is whether the notice has a reasonable chance of reaching a substantial percentage of the class members.” *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 251 (2001).

The Class Notice here, which was approved by the Court in its Preliminary Approval Order, fully satisfy these standards and those set forth in California Rule of Courts 3.766(d)-(f). The Settlement Administrator reports that out of the 33 Notice Packets mailed, no notice packets were undeliverable. McCreedy Decl. ¶ 9. The Class Notice explained the proposed settlement and procedures for Class Members to follow to participate in, to opt out of, and to object to the settlement, or if they wish, to challenge their weeks-worked, and to appear and be heard at the final

1 approval and fairness hearing. See McCreedy Decl., Exhibit A. As discussed above, zero Class
2 Members requested exclusion from the settlement, and none objected to any of the terms of
3 settlement. McCreedy Decl. at ¶¶ 13,14. The Substantial Class Recovery Balanced Against the
4 Risks Inherent in Continued Litigation Favor Final Approval

5 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
6 must also weigh the immediacy and certainty of substantial settlement proceeds against the risks
7 inherent in continued litigation. See *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996)
8 (court should consider the strength of plaintiff’s case, the risk of further litigation, including the
9 risk of maintaining class action status through trial, and the amount offered in settlement); Manual
10 For Complex Litigation § 21.62 at 316 (this analysis involves consideration of “the advantages of
11 the proposed settlement versus the probable outcome of a trial, ... the probable time, duration, and
12 cost of trial; ... [and] the probability that the class claims, issues, or defenses could be maintained
13 through trial on a class basis”).

14 As discussed in length in Plaintiff’s Motion for Preliminary Approval, the settlement is fair
15 and adequate given the litigation risks and delay inherent in further litigation and appeals. As noted,
16 the Court found the same in its Order preliminary approving the Settlement. Treglio Decl. ¶ 11.

17 The parties concluded that proceeding with litigation of the Action would be protracted and
18 expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon
19 the terms and conditions set forth in the Settlement Agreement in order to limit further expense,
20 inconvenience and distraction Treglio Decl. ¶ 11. Both Plaintiff and Defendant took into account
21 the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
22 Treglio Decl. ¶ 11.

23 Moreover, the parties engaged in extensive exchanges of informal discovery prior to
24 reaching a fair settlement in this matter. Treglio Decl. ¶ 12. Accordingly, sufficient information
25 existed to allow Class Counsel to act intelligently in valuing this case and, given the parties’ arms’
26 length bargaining, the extensive exchange of informal discovery, the experience of Class Counsel,
27 the lack of objections, and no requests for exclusion the presumption of fairness clearly applies.
28 Based on comparison with other settlements of similar cases and claims, Class Counsel maintains

the settlement as fair, reasonable, and adequate, and in the best interest of the Class. Treglio Decl. at ¶ 12. The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable and adequate is entitled to significant weight. See *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

III. THE ATTORNEYS' FEES AND LITIGATION COSTS SOUGHT ARE FAIR AND REASONABLE AND SHOULD BE APPROVED

As a component of the Settlement, Plaintiff also seeks final approval of an award of attorneys' fees to Class Counsel in the amount of \$99,999 and litigation costs of \$10,000. These amounts will be paid from the Maximum Settlement Amount as provided by the Settlement Agreement. The Court has preliminarily approved these payments from the Maximum Settlement Amount, Defendants does not oppose these deductions, and no class members have objected to any of these deductions. Moreover, they are warranted under the law and within the range of fees commonly awarded in similar cases. Accordingly, these payments should receive final approval.

A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEY'S FEES AND COSTS UNDER LABOR CODE § 218.5, 2699 AND 1194.2

Plaintiffs and the Class in this action are entitled to recover reasonable attorneys' fees, expenses and costs under section 218.5 California Labor Code, which provides that, "[i]n any action brought for the nonpayment of wages....the Court shall award reasonable attorneys' fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover reasonable attorneys' fees pursuant to sections 1194.2 and 2699(g)(1) of the Labor Code, which provides that, "...any employee receiving less than the legal minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of full amount of this minimum wage...including...reasonable attorneys' fees, and costs of suit, and states "Any employee who prevails..."³See, 2699(g)(1).³

An attorneys' fee award is justified where the legal action has produced its benefits by way

³ Plaintiffs are also entitled to fees and costs under Section 226(e) of the Labor Code (employee who prevails on claims for itemized wage statement violation "is entitled to an award of costs and reasonable attorneys' fees"); and, potentially, section 1021.5 of the California Code of Civil Procedure.

of voluntary settlement. *See Marias P. v. Riles*, 43 Cal.3d 1281, 1290-1291 (1987). California law provides that when a party is entitled to statutory fees, it must be compensated for all time reasonably spent seeking to accomplish the desired litigation result. *See Serrano v. Unruh*, 32 Cal.3d 621, 624 (1982). As shown below, California state courts award attorneys' fees in class action based on either the "lodestar-multiplier" method or the "common fund" method. Here, under the common fund method, Plaintiffs request for attorneys' fees in the amount of one-third of the Gross Settlement Amount is reasonable and appropriate.

B. PLAINTIFF'S REQUEST FOR FEES ARE REASONABLE UNDER THE COMMON FUND METHOD

Under the "common fund" doctrine, Plaintiff's request for attorneys' fees in the amount of one-third of the common fund is reasonable, justified and appropriate, because (1) it is within the range routinely awarded as attorneys' fees in similar cases; (2) it is supported by the high quality of Class Counsel's work on this case and the results obtained for the Class; (3) it is supported by the fact that this case was handled on a contingency basis and was undertaken despite various risks and expenses; and (4) no class members objected to the requested attorneys' fees.

1. The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Similar Cases Under the Well-established Common Fund Method

Attorneys' fees and litigation expenses may properly be awarded based on California's "common fund" doctrine. "The common fund doctrine, like [Code of Civil Procedure] section 1021.5 itself, is an exception to the American rule which provides that parties to a lawsuit must ordinarily pay their own attorney fees. Under both exceptions, class counsel is entitled to the same thing: reasonable attorney fees." *Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1269-70 (2005).

The California Supreme Court recently approved use of the common fund method of awarding attorneys' fees in class actions and approved a fee award at 1/3 of the settlement amount obtained for the class, the same percentage fee award as the attorneys' fees requested in this case. *See Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503 (August 11, 2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation

1 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
2 powers awards class counsel a fee out of that fund, the court may determine the amount of a
3 reasonable fee by choosing an appropriate percentage of the fund created”). The Court noted that
4 trial courts have the discretion to award fees as a percentage of the common fund, without the
5 necessity to conduct a lodestar cross-check. (*Id.*). (“...[Courts] ... retain the discretion to forgo a
6 lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage
7 fee.”).⁴ *Id.*, at 505. The California Supreme Court’s decision was consistent with its prior rulings
8 recognizing that “when a number of persons are entitled in common to a specific fund, and an action
9 brought by ... plaintiffs for the benefit of all results in the creation or preservation of that fund, such
10 ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*, 20 Cal.3d 25,
11 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a
12 common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).

13 The negotiated and unopposed attorneys’ fee should also be approved because it is within
14 the approved range of appropriate awards of attorneys’ fees in similar wage/hour class action cases
15 in California and in Los Angeles County. Class counsel have been involved in a number of wage
16 and hour class actions like this one, and California state and federal courts have routinely approved
17 payments of attorneys’ fees amounting to 1/3 or more of the settlement fund.

18 **2. The High Quality of Work and Excellent Result Obtained Support the Award**

19 In addition to the fact that a Class benefit was created with a common fund, the fairness of
20 the requested fee award of one-third of that common fund is supported by the high quality of work
21 performed by Class Counsel and the good result obtained for the Class. Treglio Decl. ¶ 13. Class
22 Counsel diligently, efficiently, and creatively pursued this case and promptly reached a successful
23 settlement for the benefit of the entire Class. Treglio Decl. ¶ 13. The fact that the settlement was
24 embraced and supported by the entire Class, as evidenced by the complete lack of any objections
25 and no opt-outs, demonstrates that Class Counsel obtained a very favorable result for the Class.

26
27
28 ⁴ Here, Class Counsel seeks fees based on the common-fund method. However, if the Court wishes to review Class Counsel’s lodestar to date, Class Counsel can provide the court with detailed time records of all timekeepers who worked on this case as well as their respective hourly rates.

1 Treglio Decl. ¶¶ 11, 12. The results obtained are laudable because 100% of the Net Settlement
2 Amount will be distributed to 33 Class Members, with a 100% participation rate and none of the
3 settlement funds to Defendant. If retro federal preemption had passed, or it if passes in the future,
4 this will be proven to be an even more excellent result.⁵

5 **3. The Contingent Nature of Class Counsel's Representation of Plaintiff and the**
6 **Class Further Supports the Fee Award at One-Third of the Common Fund**

7 An additional factor militating in favor of the granting of the requested fee award is the fact
8 that this case was both legally and financially risky for Plaintiff's Counsel. See *Vizcaino v.*
9 *Microsoft Corp*, 290 F.3d 1043, 1048-49 (9th Cir. 2002). Specifically, there was the prospect of
10 enormous cost inherent in class action litigation, as well as a battle with a corporation represented
11 by a well-respected law firm; in addition, in coming to a determination that this settlement is fair
12 and reasonable and in the best interests of the Class. In light of Defendants' legal and factual
13 arguments, the ultimate success of either party's arguments was uncertain. Taking all the arguments
14 and defenses into account, the settlement amount reflects the realistic and fair value of the class
15 claims at issue. It is further consistent with similar settlements that have been finally approved by
16 various Courts. While the parties dispute whether a class would be appropriate if the litigation were
17 to continue, they agree, for the purposes of this settlement only, that the Class is subject to common
18 compensation policies. Treglio Decl. ¶ 14. If Plaintiff had lost this case, Class Counsel would have
19 recovered nothing, and would have lost his out-of-pocket costs. *Id.* at 16.

20 Finally, the absence of any objections to the requested fee award also supports the
21 appropriateness and reasonableness of the requested attorneys' fees. *In Re Heritage Bond Litig.*,
22 2005 WL 1594403, at *21 (C.D. Cal. 2005) ("The absence of objections or disapproval by class
23 members to Class Counsel's fee further supports finding the fee request reasonable.").

24 **C. CLASS COUNSEL SHOULD BE REIMBURSED FOR LITIGATION COSTS AND EXPENSES**

25 Class Counsel also requests reimbursement from the common fund for out-of-pocket
26 expenses incurred during this litigation. Class Counsel is permitted to recover their litigation costs
27 _____
28

1 and expenses under the common fund doctrine. *See Serrano v. Priest III*, 20 Cal.3d 24, 35 (1977)
2 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San*
3 *Diego*, 11 Cal.App.4th 1410, 1424 n.6 (1992) (costs are recoverable from the common fund “[o]f
4 necessity, and for precisely the same reasons discussed above with respect to the recovery of
5 attorneys’ fees by . . . [Plaintiffs’] attorneys”). Furthermore, regardless of the method chosen by the
6 Court to calculate attorneys’ fees, Plaintiff’s Counsel are entitled to recover “those out-of-pocket
7 expenses that would normally be charged to a fee-paying client.” *Harris v. Marhoefer*, 24 F.3d 16,
8 19 (9th Cir. 1994).

9 Here, the actual litigation costs incurred in this case, including estimated costs in connection
10 with the filing of this motion, amounts to **\$14,246.43**. *See*, Treglio Decl., ¶ 18, containing an
11 itemized breakdown of all costs incurred in connection with this case, which includes anticipated
12 costs in association with the filing and service of this motion, and anticipated costs to be incurred
13 in connection with shepherding this settlement through the funding, payment plan, and
14 disbursement. As the Court will note, the Settlement allows for Class Counsel to seek litigation
15 costs up to \$10,000, which is what is being sought here, not the full amount of costs.

16 **IV. THE COURT SHOULD AWARD THE CLASS REPRESENTATIVE REQUESTED**
17 **ENHANCEMENT AWARD**

18 Finally, Plaintiff request approval of the proposed payment of \$5,000.00 each. This
19 proposed Class Representative Payment, to which no Class Member has objected, and which
20 Defendants does not oppose, is intended to recognize the time, effort, and risk that Plaintiffs
21 undertook in bringing this case and help to secure the relief obtained for the members of the Class.
22 *See Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service
23 payments” to named plaintiff for his efforts in bringing class case); *Rodriguez v. West Publishing*,
24 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are “intended to compensate class
25 representatives for work done on behalf of the class, to make up for financial or reputational risk
26 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
27 attorney general.”). “Courts routinely approve Enhancement Awards to compensate named
28 plaintiffs for the services they provide and the risks they incurred during the course of the class

1 action litigation.” *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 490 (E.D.Cal. 2010)
2 (citing *Ingram v. Coca-Cola Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)).

3 Here, the amount of the Class Representative Payment is warranted based on the reasons
4 specified in his declaration in support of preliminary approval which were itemized as follows: the
5 time and effort that the named Plaintiffs devoted to this case including spending significant time on
6 the phone with counsel throughout the entire duration of the litigation, settlement discussions,
7 approval process, preparing and gathering documents in support of the asserted claims, personally
8 participating actively throughout the mediation, the valuable assistance he provided to Class
9 Counsel; and the fact that Plaintiffs entered into general release of claims that is broader than the
10 release of the Class. Treglio Decl. ¶ 19.

11 Plaintiffs also assumed significant risk in bringing this litigation—namely, had he lost, he
12 would have been responsible for paying Defendants’ costs. Treglio Decl. ¶ 19. Plaintiffs provided
13 invaluable assistance to Class Counsel and the Class in this case, including providing factual
14 background for the Class Complaint; speaking with other potential class members about his
15 experiences working for Defendants; reviewing the Complaint; providing documents about
16 Defendants’ compensation plan; participating in phone calls as well as in-person meetings to
17 discuss litigation and settlement strategy; participating in an all-day mediation, and reviewing the
18 settlement documents. Treglio Decl. ¶ 19. Plaintiffs agreed to participate in this case with no
19 guarantee of personal benefit. *Id.* And, in fact, each had previously been terminated from their
20 employment with Defendants because of their involvement in this action. (CITE).

21 Further, Plaintiffs agreed to undertake the financial risk as Class Representatives and
22 exposed themselves to the risk of negative publicity by anyone who opposed this case. Plaintiffs
23 also entered into a general release, which is broader than the release by the Class Members. *Id.*

24 **CONCLUSION**

25 For the foregoing reasons, Plaintiff hereby respectfully requests that the Court finally
26 approve the Settlement in the form of the Proposed Order Granting Final Approval of Class Action
27 Settlement submitted herewith, including the Gross Settlement Amount, the proposed attorneys’
28 fees, costs, settlement administration fee, and the Class Representative Payment.

1
2 Respectfully Submitted,
3 POTTER HANDY LLP
4

5 Date: November 1, 2024

6 By: /s/ James M. Treglio
7 James M. Treglio, Esq.
8 Attorney for Plaintiffs and the Class
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