Brian J. Mankin, Esq. [CSB No. 216228]
*brian@lmlfirm.com*
Kristina Bui Carlson, Esq. [CSB No. 294924]
*kristina@lmlfirm.com*
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

| | |
|---|---|
| MICHAEL THOMAS, individually, on a representative basis, and on behalf of all others similarly situated;<br><br>Plaintiff,<br><br>vs.<br><br>PLATINUM EXPRESS, INC., a California Corporation; and DOES 1 through 20, inclusive;<br><br>Defendants. | Case No.: CIVSB2225075<br>*[Assigned to Hon. Christian Towns, Dept S26, for all purposes]*<br><br>**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER**<br><br><u>Hearing</u><br>Date: July 3, 2025<br>Time: 8:30 a.m.<br>Dept.: S26 |

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 3, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard by the Honorable Christian Towns in Department S26 of San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Michael Thomas, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Parties' class action settlement, including:

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

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

Dated: June 10, 2025 LAUBY, MANKIN & LAUBY LLP

BY: ______________________________
Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Proposed Class

## TABLE OF CONTENTS

# TABLE OF AUTHORITIES

Cases

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiff Michael Thomas ("Plaintiff") seeks preliminary approval of a $200,000 wage-and-hour class action settlement on behalf of approximately 436 current and former California resident truck drivers who performed services for Defendant Platinum Express, Inc. ("Defendant" or "Platinum Express") and its owner Amitpal Dhugga (collectively, the "Defendants") in California at any time from November 4, 2018, through December 31, 2024. (Plaintiff and Defendants are collectively referred to as the "Parties"). This settlement was reached after mediation with an experienced mediator (although mediation did not result in a settlement due to a claimed financial hardship), which then led to an extensive review of Defendants' financial condition by a financial expert, who advised that the financial records could justify the settlement amount to be paid over the course of a payment plan beginning with the first payment by the later of 30 days after the Effective Date or by October 2026 and concluding with a second payment by the later of 60 days after the Effective Date or by October 2027.

Under the terms of the Settlement Agreement,[1] Defendants will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed 1/3 of the Settlement Amount, litigation expenses projected to be approximately $15,000, Administrator Costs of $9,000, PAGA penalties of $10,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of $10,000 to Plaintiff ("Class Representative"). (S.A. ¶ 49, *et seq*.)

After all Court-approved deductions from the Settlement Amount, it is estimated that $89,333.34 will be available to pay the Class Members, as follows:

/ / /

/ / /

/ / /

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

| | |
|---|---|
| ***Settlement Amount*** | **$ 200,000.00** |
| Attorneys' Fees (1/3 of Settlement Amount) | $ 66,666.66 |
| Litigation Costs (projected) | $ 15,000.00 |
| Administrator Costs | $ 9,000.00 |
| PAGA Penalties | $ 10,000.00 |
| Class Representative Service Award | $ 10,000.00 |
| ***Net Settlement Amount*** | **$ 89,333.34** |

Assuming 436 Class Members, the average payment to each Class Member will be approximately $204.89 ($89,333.34 / 436). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately $9.21 ($89,333.34 / 9,697 estimated Work Weeks). In addition, the Aggrieved Employees will receive a share of the $2,500 PAGA Penalties (25% of the total $10,000 allocation), calculated pro-rata based on Work Weeks worked during the period of December 31, 2024 (the "PAGA Period"). (S.A. ¶ 49(h)).

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

## II. BACKGROUND

### A. THE CLASS AND AGGRIEVED EMPLOYEES

The Class is defined as follows:

> All current and former California resident truck drivers who were employed by Defendant Platinum Express, Inc. and who performed services in California for Defendant Platinum Express, Inc. at any time during the Class Period of November 4, 2018, through December 31, 2024. (S.A. ¶¶ 6, 10).

The Aggrieved Employees are defined as follows:

> All current and former California resident truck drivers who were employed by Defendant Platinum Express, Inc., in California at any time during the PAGA Period of November 4, 2021, through December 31, 2024. (S.A. ¶¶ 4, 25).

### B. <u>PROCEDURAL HISTORY</u>

On November 3, 2022, Plaintiff Michael Thomas submitted a letter to the Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 ("PAGA"), and simultaneously sent a letter to Defendants requesting the production of personnel and timekeeping records to further evaluate his wage and hour claims. (Mankin Decl. ¶ 11).

On November 4, 2022, Plaintiff filed a putative class action complaint against Defendant Platinum Express, Inc., in San Bernardino County Superior Court. After the LWDA declined to assert jurisdiction over the PAGA claims, Plaintiff filed the operative First Amended Complaint, alleging putative class and representative PAGA claims, including: (a) failure to pay minimum wages, (b) failure to pay rest and recovery periods, (c) failure to reimburse business expenses, (d) failure to pay all wages due and owing each pay period and upon separation of employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and (g) related claims under PAGA. Plaintiff later filed DOE amendments as to Defendants Gerardo Aceves and Amitpal Dhugga, although Plaintiff dismissed Gerardo Aceves. (Mankin Decl. ¶ 12).

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

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

On March 12, 2024, Plaintiff and Defendants participated in mediation before Kelly Knight, Esq., a well-respected wage-and-hour mediator. The matter did not settle at the conclusion of mediation. Instead, the Parties spent months exchanging additional documents, including confidential financial documents from all Defendants, and conducting expert review before continuing extensive arms-length negotiations, wherein the Parties reached a global settlement and entered into this Settlement. The Parties now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 15).

## III. SUMMARY OF THE PROPOSED SETTLEMENT

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

### A. SETTLEMENT CONSIDERATION AND ALLOCATION

The $200,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes (1) Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of $10,000 to Plaintiff, subject to approval by the Court; (3) Administration Costs not to exceed $9,000; (4) a $10,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 49 and subparts). Defendants will separately pay their share of employer payroll taxes and withholdings. (S.A. ¶ 49(a)).

### B. NOTICE PROCEDURES

The proposed Notice will be provided to the Class showing the estimated amounts that each Class Member will receive, the number of Work Weeks credited as a Class Member and/or Aggrieved Employee (*See* Exhibit B to Mankin Decl.). Within 14 calendar days after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the Administrator with the "Class Data" consisting of Class Member names, addresses, phone numbers, Social Security Numbers, and Weeks Worked during the Class/PAGA Period(s) (S.A. ¶¶ 9, 63).

Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the numbers for each Class Member, populate the Notice, and send each Class Member the Notice via first-class, United States mail. (S.A. ¶ 65).

If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall perform a skip trace search and seek an address correction for the Class Member(s), and a second Notice will be sent to any new or different address obtained. (S.A. ¶ 66).

### C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely request to be excluded from the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. To request to be excluded from the Settlement, the Class Member must submit a written Request for Exclusion to the Administrator no later than 30 days after being mailed the Class Notice by the Administrator ("Response Deadline"). (S.A. ¶¶ 22, 70). Any Request for Exclusion that is not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which case the Class Member's Request for Exclusion must be returned by the later of the original Notice Response Deadline or 14 calendar days after the remailing of the notice. (S.A. ¶ 66).

The Class Notice shall inform Class Members of their right to object to the Settlement. Any Participating Class Member who wishes to object to the Settlement may submit a written objection to the Administrator no later than the Response Deadline. (S.A. ¶ 70 (c)).

### D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Class Member's Individual Class Payment is tied to the number of Work Weeks worked by each Class Member for Defendants during the Class Period. Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's number of Work Weeks worked (S.A. ¶ 49(c)).

Additionally, each "Aggrieved Employee" will receive an Individual PAGA Payment calculated in the same way; thus, the $2,500 PAGA Penalties allocated to the Aggrieved

Employees will be divided and paid on a Work Weeks basis. (S.A. ¶ 49(h)).

The Class Notice will inform Class Members of their estimated share and the number of Work Weeks they worked during the Class and/or PAGA Period(s). Class Members may dispute Work Weeks if they feel they worked more in the Class or PAGA Periods than Defendants' records show by timely submitting evidence to the Administrator. (S.A. ¶ 68).

### E. TIMING OF SETTLEMENT DISBURSEMENTS

Due to Defendants financial conditions, the Parties agreed to a payment plan. To that end, Defendants are required to deposit the Settlement Amount, along with the employers' share of payroll taxes owed, with the Settlement Administrator, based on the following payment plan:

a. By the later of 30 days after the Effective Date or by October 15, 2026, Defendants shall fund $100,000.00, which shall be distributed in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for one-half the Court-awarded amounts [$100,000.00 is tone-half of the Settlement Amount];

b. By the later of 60 days after the Effective Date or October 15, 2027, Defendants shall fund $100,000.00, representing the remaining balance of the Settlement Amount, and which will be distributed in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for all remaining Court-awarded amounts. (S.A. ¶ 71)

Within 10 calendar days after receiving each payment described above, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 73).

Class Members will have 180 days to cash each settlement check. (S.A. ¶ 74). If a Class Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member/Aggrieved Employee (*Id.*).

/ / /

/ / /

### F. <u>TAX TREATMENT</u>

The Parties agree that 20% of the Individual Settlement Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining 80% will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 49(d)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 49(h)). These allocations are in line with the claim valuations in the *Kullar* analysis discussed below (*i.e.*, the penalty claims [§§ 203 and 226] comprise the majority of risk-adjusted value). Defendants will separately pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 49(a)).

### G. <u>PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS</u>

In exchange for these payments, the Settlement Agreement at ¶ 31 defines the Released Class Claims and provides that the Participating Class Members will release the Released Parties of:

> the claims stated in the Complaint and those claims that reasonably could have been brought based upon the facts in the Complaint, including but not limited to: (a) failure to pay minimum wages, (b) failure to pay rest and recovery periods, (c) failure to reimburse business expenses, (d) failure to pay all wages due and owing each pay period and upon separation of employment, (e) failure to provide accurate itemized wage statements, (f) unfair and unlawful competition, and (g) all other claims for statutory penalties based on the facts or claims alleged in the Complaint.

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

### H. <u>AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS</u>

The Settlement Agreement at ¶ 32 also defines the "Released PAGA Claims" as follows:

> all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letters, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay rest and recovery periods, (c) failure to reimburse business expenses, (d) failure to pay all wages due and owing each pay period and upon separation of employment, (e) failure to provide accurate itemized wage statements, and (f) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the Released PAGA Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 70).

## IV. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

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

### A. ASCERTAINABILITY AND NUMEROSITY

In determining whether a class is ascertainable, the court considers "(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members." *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendants' records, there are approximately 122 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiff's proposed Class meets the ascertainability and numerosity requirements.

### B. WELL-DEFINED COMMUNITY OF INTEREST

#### *1. Commonality*

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

#### *2. Typicality*

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

#### *3. Adequacy of Representation*

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

Adequacy may be established by the fact that counsel are experienced practitioners. See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-6).

*4.* *Superiority*

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

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

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

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

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

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. See *Dunk,* 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement." *Dunk, supra* (detailing non-exhaustive list of factors for court's consideration at final approval).

The above factors are not exclusive "and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal.App.4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.* The inquiry must be limited "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." *Id.* (internal citation and quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. 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." *Dunk*, *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

### B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS

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

### C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT

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

### D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

To evaluate a settlement, the parties must provide the trial court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

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

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

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

Based upon data obtained through informal discovery, Plaintiff's counsel estimated the following data *through mediation*: (1) 436 Class Members, (2) approximately 398 *former* Class Members for purposes of Labor Code § 203, (3) 9,697 Work Weeks, and (4) approximately 6,407 wage statements during the PAGA Period. (Mankin Decl. ¶ 17).

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

As to the unpaid wage claims, Plaintiff alleged that Defendants paid Class Members on a "per-mile" driven basis. Therefore, Plaintiff alleged that Defendants failed to pay all required minimum and overtime wages due to a practice that required Class Members to complete non-driving tasks (*e.g.*, pre-trip and post-trip inspections, fueling, going through truck scales, detention time) without any compensation for these tasks. In total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be $688,009. (Mankin Decl. ¶ 19).

However, Defendants vehemently opposed these unpaid wage claims on the merits and as to the propriety of class certification. Moreover, in addition to its other defenses on the merits, Defendants argued that Plaintiff would be unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class would be unable to introduce evidence as to the amount of unpaid wages (since the claims are not apparent from the timekeeping records alone), thus defeating liability. (Mankin Decl. ¶ 20).

Due to the defenses and arguments raised, Plaintiff assigned a 40% risk for the unpaid wage claim at the class certification stage and an additional 40% risk on the merits. In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as $247,683. (Mankin Decl. ¶ 21).

Plaintiff alleged claims for waiting time penalties and wage statement violations. But these claims were entirely derivative of the claims above, meaning that they only had merit if the claims for unpaid wages were successful. The maximum values for these claims were as follows: (1) $3,373,408 for waiting time penalties [398 former employees x $282 average daily pay x 30 days], and (2) $637,200 for wage statement violations [6,407 wage statements at the $50/$100 formula under § 226(e)]. (Mankin Decl. ¶ 22).

But Defendants raised a variety of defenses to these derivative claims that impacted the valuation. Namely, Defendants argued that the wage statements did not violate Labor Code § 226 and, even if there was a "technical" violation, Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements. Based on these facts and defenses, Plaintiff placed a 40% risk at class certification (mirroring the claims on which the wage statement claim was based) and estimated another 40% risk the merits, leading to a risk-adjusted value of $229,392 for the wage statement claims. (Mankin Decl. ¶ 23).

Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid wage claims and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendants argued there was no "willful" violation as they were inadvertent and unintentional. As a result of this analysis, Plaintiff's counsel applied a 40% risk at class certification and a 40% risk on the merits, leading to a risk-adjusted value of $1,214,427 (Mankin Decl. ¶ 24).

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

| | | |
|---|---|---|
| • Unpaid Wage Claims | $ | 247,683 |
| • Wage Statement Claims | $ | 229,392 |
| • Waiting Time Penalty Claims | $ | 1,214,427 |
| • **Total Risk Adjusted Penalties and Damages** | **$** | **1,691,502** |

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 11.82% of the risk-adjusted class damages and penalties, despite serious financial constraints, as further seen through the payment plan for funding of the Settlement. And while the PAGA penalties had a maximum value in the six figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the underlying claims and particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil penalty claims on top of underlying statutory claims. Finally, Defendants argued financial concerns, including bankruptcy, that further necessitated additional discounts – which Plaintiff's counsel diligently vetted through a separate analysis conducted by a financial expert. For these reasons, the Parties submit that this settlement is fair and reasonable. For these reasons, the Parties submit that this settlement is fair and reasonable.

### E. <u>THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES</u>

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

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

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

The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members with all due process protections required by the U.S. Constitution. Moreover, the contents of the Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The 30-day deadline to opt-out or object is also reasonable, as it provides Class Members sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he or she will automatically be sent a settlement check.

### F. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

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

### G. THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR

Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement of up to $25,000 in litigation costs (although the projected costs are expected to be approximately $15,000), along with attorneys' fees equal to one-third of the Settlement Amount. See, *e.g.*, *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, and holding that when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee 1/3 of the total maximum settlement amount of $4.5 million since 1/3 was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: "[f]ee awards in class actions average around one-third of the recovery.").

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

### H. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of $10,000 to the Class Representative, which is reasonable given the recovery Class Members will receive on average, as well as the time and effort he devoted to this case. Their efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Defendants' compensation plan; participating in phone calls to discuss litigation and settlement strategy; making themselves available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—namely, had he lost, he could have been ordered to pay Defendants' costs.

The requested service award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. See, *e.g.*, *Bond v. Ferguson Enterprises, Inc*. (E.D. Cal. 2011) 2011 WL 2648879 (approving $11,250 service awards in trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of $15,000 from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc*. (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards "of $ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of $25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement).

## VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR

The parties selected Phoenix Settlement Administrators ("Phoenix") as the Administrator. Phoenix has provided a flat-fee proposal to administer this settlement for $9,000. (Mankin Decl. ¶ 37; Exhibit D to Mankin Decl. [Administrator's bid]).

/ / /

## VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the Settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval approximately 130 days after the Preliminary Approval Order, as follows:

| | |
|---|---|
| July 3, 2025 | Preliminary Approval (PA) hearing |
| July 28, 2025<br>*24 days after PA* | Deadline for Administrator to complete first mailing of the Notice to all Class Members. |
| August 27, 2025<br>*30 days after mailing Notice* | Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement. |
| 16 court days before Final Approval hearing | Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments. |
| 9 court days before Final Approval hearing | Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection. |
| 5 court days before final approval hearing | Deadline for filing of any written reply to opposition Motion for Final Approval |
| November 15, 2025<br>Approx. *130 days after PA* | Final Approval Hearing. |

## VIII. CONCLUSION

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

Dated: June 10, 2025

LAUBY, MANKIN & LAUBY LLP

BY: ______________________

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

**PROOF OF SERVICE**
**(Pursuant to CCP §§ 1013(a)(1) and 2015.5)**

STATE OF CALIFORNIA )
) ss.
COUNTY OF RIVERSIDE )

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On June 10, 2025, I caused to be served the foregoing document(s) described as follows:

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

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**[ ]** **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

**[ ]** **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

**[ ]** **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

**[X]** **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

**[ ]** **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

**[ ]** **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

**[X]** **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 10, 2025, Riverside, California.

**[ ]** **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Tracie Chiarito, Declarant

## **SERVICE LIST**

Jonathan R. Babione, Esq.
jbabione@ferberlaw.com
Jessica M. Di Palma, Esq.
jdipalma@ferberlaw.com
FERBER LAW, A Professional Corporation
2603 Camino Ramon, Suite 385
San Ramon, California 94583
(925) 355-9800
Attorneys for Defendant Platinum Express, Inc.