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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

QUINCY GRIFFIN PERKINS, JOSE
JOHNSON, IGNACIO PARKS, AND
TIWAN JOHNSON, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

HADCOMETAL TRADING SANTA
FE
SPRINGS CA dba RYDER
INTEGRATED
LOGISTICS INC.: and DOES 1-50,
inclusive,

Defendants.

Lead Case No. 3:23-cv-00502-WHO
[Consolidated for all purposes with
Case No. 3:23-cv-01694-WHO &
Case No. 4:22-cv-07456-JST]

[Assigned to the Honorable William H.
Orrick]

FRCP RULE 23 CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: May 29, 2024
Time: 02:00 p.m.

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1 **I. INTRODUCTION**

2 Through this unopposed motion, Plaintiffs Quincy Griffin Perkins, Jose Johnson,
3 Ignacio Parks, and Tiwan Johnson (collectively, “Plaintiffs”) seek the Court’s
4 preliminary approval of a Class Action and PAGA Settlement Agreement (“Settlement,
5 “Settlement Agreement” or “S.A.”)¹ that, subject to the Court’s approval, resolves all of
6 the claims alleged in Plaintiffs’ Complaint in the Civil Action, as defined in the
7 Settlement Agreement, and the PAGA Letters. (Dkt.41). The Settlement provides that
8 Defendants will pay the Gross Settlement Amount (“GSA” or “Settlement Amount”) of
9 \$2,950,000.00 on a non-reversionary basis to fund a class-wide settlement on behalf of
10 the “Class Members,” defined as follows: All current and former hourly-paid or non-
11 exempt employees of Ryder Transportation Solutions, LLC and/or Ryder Integrated
12 Logistics, Inc. employed in California at any time during the Class Period (*i.e.*, October
13 17, 2018 through January 24, 2024).²

14 In total, there are an estimated 5,375 Class Members. The Parties have agreed that
15 \$60,000 of the Gross Settlement Amount shall be allocated to the resolution of all alleged
16 claims under PAGA on behalf of the “PAGA Employees,” defined as follows: all current
17 and former hourly-paid or non-exempt employees of Ryder Transportation Solutions,
18 LLC and/or Ryder Integrated Logistics, Inc. employed in California at any time during
19 the PAGA Period (*i.e.*, October 14, 2021 through January 24, 2024). Bokhour Decl., Ex.
20 1 at ¶¶ 25-26.

21 Under the terms of the Settlement Agreement, Plaintiffs will seek an application
22 for (1) a reasonable award of attorney’s fees in the amount of \$983,333.33³ (1/3 of the
23 Gross Settlement Amount), (2) compensation of Plaintiffs’ litigation expenses not to
24 exceed \$50,000.00, (3) a settlement administrator payment estimated to be approximately
25

26 ¹ A true and correct copy of the Settlement Agreement is attached to the Declaration of Mehrdad Bokhour
27 (“Bokhour Decl.”) as **Exhibit 1**, and Amendment Thereto as **Exhibit 2** with the proposed Amended Class Notice
28 attached thereto as **Exhibit 1**.

² Bokhour Decl., Ex. 1 at ¶ 3.

³ While the agreement calls for up to 35%, Counsel for Plaintiffs have agreed to not seek fees greater than 1/3 of the GSA.

\$35,000.00, (4) a PAGA Fund of \$60,000.00 (of which \$45,000.00 or 75% will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining \$15,000.00 or 25% will be paid to the PAGA Employees), and (5) Class Representative Enhancement Awards to each named Plaintiff in an amount not to exceed \$15,000.00 for their participation in this case and consideration of their general release.

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$1,712,500.00 will be available to pay the Individual Settlement Payments of the Participating Class Members (i.e., those Class Members who do not opt-out of the settlement), as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$2,950,000.00
Attorneys’ Fees (35 percent of GSA)	\$983,333.33
Litigation Costs (Not to Exceed)	\$50,000.00
Administrator Costs (Not to Exceed)	\$35,000.00
PAGA Fund	\$60,000.00
Class Representative’s Service Award	\$60,000.00
<i>Net Class Settlement Amount</i>	\$1,761,666.67

The Net Class Settlement Amount will be allocated and paid on a pro rata basis based on each Participating Class Member’s total number of weeks worked during the Class Period. The average Individual Settlement Payment that will be paid to Participating Class Members is estimated to be approximately \$327.75, less payroll deductions and withholdings on the wage portion of the settlement payment (Defendants will separately pay their share of payroll taxes). The Net PAGA Settlement Amount of \$15,000 that will be disbursed to the PAGA Employees from the PAGA Fund will be allocated and paid on a pro-rata basis based on each PAGA Employee’s total number of pay periods worked during the PAGA Period. The Average PAGA payout to the aggrieved employees is approximately \$20.

Because the settlement is fair and reasonable, Plaintiffs respectfully request that the Court enter an order preliminarily approving the settlement, conditionally

certifying the Class for settlement purposes only, approving the proposed Notice of Class and PAGA Settlement to Class Members and PAGA Employees, appointing Plaintiffs' counsel as class counsel, appointing ILYM Group as the Settlement Administrator, and scheduling a hearing for final approval of the Settlement.

I. BACKGROUND

A. PROCEDURAL HISTORY

On October 14, 2022, counsel for Plaintiffs Jose Johnson and Ignacio Parks sent a notice of alleged Labor Code violations purportedly caused by RTS to the LWDA.

On October 17, 2022, Plaintiffs Jose Johnson and Ignacio Parks filed a Complaint in the Superior Court of the State of California for the County of Alameda against RTS, entitled *Jose Johnson et al. v. Ryder Transportation Solutions, LLC*, Alameda County Superior Court No. 22CV019819 ("*Johnson Action*"), alleging six (6) causes of action for: (1) minimum wage violations, (2) failure to pay wages timely during employment, (3) failure to indemnify all necessary business expenses, (4) wage statement violations, (5) waiting time penalties, and (6) unfair competition.

On November 14, 2022, Plaintiff Quincy Griffin Perkins filed a Complaint in the Superior Court of the State of California for the County of Alameda against RIL, entitled *Quincy Griffin Perkins v. Hadco Metal Trading Santa Fe Springs CA dba Ryder Integrated Logistics Inc.*, Alameda County Superior Court No. 22CV021674 ("*Perkins I*"). In *Perkins I*, Plaintiff Quincy Griffin Perkins alleged twelve (12) causes of action against RIL for: (1) failure to pay wages including overtime, (2) failure to provide meal periods, (3) failure to provide rest periods, (4) failure to timely pay wages, (5) failure to provide accurate itemized wage statements, (6) failure to indemnify necessary business expenses, (7) violation of California's unfair competition laws, Business & Professions Code Sections 17200 *et seq.*, (8) improper use of consumer credit report, (9) violation of the Fair Credit Reporting Act for failure to make proper disclosures, (10) violation of the Fair Credit Reporting Act for failure to obtain authorization, (11) failure to make proper disclosure and obtain authorization (California Civil Code §§ 1786 *et seq.*), and (12)

1 failure to make proper disclosure (California Civil Code §§ 1785 *et seq.*). Plaintiff
2 Quincy Griffin Perkins erroneously named Defendant RIL as “Hadco Metal Trading
3 Santa Fe Springs CA dba Ryder Integrated Logistics, Inc.” On that same day, Perkins’
4 counsel sent a notice of alleged Labor Code violations purportedly caused by RIL to the
5 LWDA.

6 On November 23, 2022, RTS removed the *Johnson* Action to the United States
7 District Court of the Northern District of California where it was assigned Case No.
8 3:22-cv-07456.

9 On January 19, 2023, Plaintiff Quincy Griffin Perkins filed a separate action
10 alleging one claim under PAGA against RIL, entitled *Quincy Griffin Perkins v. Hadco*
11 *Metal Trading Santa Fe Springs CA dba Ryder Integrated Logistics Inc.*, Alameda
12 County Superior Court No. 23CV025921 (“*Perkins II*”). Plaintiff Quincy Griffin
13 Perkins again erroneously named Defendant RIL as “Hadco Metal Trading Santa Fe
14 Springs CA dba Ryder Integrated Logistics, Inc.”

15 On February 2, 2023, RIL removed *Perkins I* to the United States District Court of
16 the Northern District of California where it was assigned Case No. 3:23-cv-00502.

17 On March 22, 2023, the parties to the *Johnson* Action filed a Joint Stipulation for
18 Leave to File a First Amended Complaint. The stipulation attached the proposed First
19 Amended Complaint which added a separate cause of action for penalties under
20 California’s Private Attorneys General Act (PAGA), and stated that the First Amended
21 Complaint would be deemed filed as of the date the court approved the stipulation. On
22 March 23, 2023, the court issued an order granting the parties’ stipulated request to file
23 the First Amended Complaint.

24 On April 7, 2023, RIL removed *Perkins II* to the United States District Court of
25 the Northern District of California, where it was initially assigned Case No. 4:23-cv-
26 01694 and then later Case No. 3:23-cv-01694-WHO.

27 On May 4, 2023, the parties to *Perkins II* filed a Joint Stipulation to Transfer and
28 Consolidate the action with *Perkins I*. On May 10, 2023, the presiding judge over

1 *Perkins II* granted the stipulation, and the case was consolidated with *Perkins I* with
2 3:23-cv-01694-WHO as the lead case caption.

3 On October 12, 2023, counsel for Plaintiffs Jose Johnson and Ignacio Parks sent a
4 letter to RIL on behalf of former RIL employee Tiwan Johnson, advising that they
5 represented his interests and requesting various employment records on his behalf.

6 On December 8, 2023, Plaintiffs filed a First Amended Consolidated Class and
7 PAGA Action Complaint, consolidating the *Perkins* Actions with the *Johnson* Action.
8 On December 21, 2023, Plaintiffs filed a Second Amended Consolidated Class and
9 PAGA Action Complaint. The Plaintiffs in the First and Second Amended Consolidated
10 Class and PAGA Action Complaint are Jose Johnson, Ignacio Parks, Quincy Griffin
11 Perkins, and Tiwan Johnson, and the Defendants are RIL and RTS. Plaintiffs alleged the
12 following causes of action in the Second Amended Consolidated Class and PAGA
13 Action Complaint: (1) failure to pay wages including overtime and minimum wages, (2)
14 failure to provide meal periods, (3) failure to provide rest periods, (4) failure to timely
15 pay wages, (5) failure to provide accurate itemized wage statements, (6) failure to
16 indemnify necessary business expenses, (7) violation of Business & Professions Code
17 Section 17200, *et seq.*, and (8) PAGA penalties.

18 On November 22, 2023, Plaintiffs Jose Johnson, Ignacio Parks, Quincy Griffin
19 Perkins, and Tiwan Johnson sent an amended notice of alleged Labor Code violations to
20 the LWDA. On January 30, 2024, Plaintiffs Jose Johnson, Ignacio Parks, Quincy Griffin
21 Perkins, and Tiwan Johnson sent a further amended notice of alleged Labor Code
22 violations to the LWDA. (Bokhour Decl. ¶ 11).

23 Shortly after removal, Plaintiffs served written discovery on Defendants, including
24 special interrogatories with a demand for the class contact information, and requests for
25 production of documents.

26 In preparation for the Rule 26 conference, the Parties engaged in a series of meet
27 and confers regarding the merits of the claims and defenses, the scope of class discovery,
28 briefing schedules and other matters. After the Rule 26 conference, the Parties engaged

1 in an exchange of discovery in preparation for class certification, including exchanging
2 initial disclosures, written discovery, and Defendants produced hundreds of documents
3 relating to applicable policies, class claims, pay structures, and related matters. After
4 receiving the documents, Plaintiffs discovered an alternative unpaid-wage theory relating
5 to Defendants' alleged unlawful Alternative Workweek Schedule practice and alleged
6 failure to correctly pay overtime and sick pay wages, and promptly filed a First Amended
7 Complaint to incorporate these theories. (Dkt. 26). (Bokhour Decl. ¶ 12).

8 As discovery continued, the Parties discussed scheduling various depositions,
9 including those of the Plaintiffs, various employees, and fact witnesses. Plaintiffs'
10 counsel interviewed numerous Class Members and was prepared to obtain
11 declarations/depositions for a class certification motion (Bokhour Decl. ¶ 13).

12 **Other cases that will be affected by the Settlement**

13 On March 13, 2023, Tiffeny Nance ("Nance") filed a class action lawsuit against
14 Ryder Integrated Logistics, Inc. and Ryder System, Inc., styled *Tiffeny Nance, et al., v.*
15 *Ryder Integrated Logistics, Inc. & Ryder System, Inc., et al.* ("Nance I") The case was
16 filed in the U.S. District Court for the Eastern District of California (Case No. 2:23-CV-
17 00477-TLN-JDP) and assigned to Judge Troy L. Nunley. In *Nance I*, Nance alleges
18 claims for: (1) failure to provide meal periods in violation of Labor Code Sections 226.7
19 and 512; (2) failure to provide rest periods in violation of Labor Code Section 226.7; (3)
20 failure to pay for all hours worked in violation of Labor Code Sections 204; (4) failure to
21 pay minimum wages for all hours worked in violation of Labor Code Sections 558,
22 1182.12, 1194, 1197, and 1197.1; (5) failure to pay overtime wages in violation of Labor
23 Code Sections 210 and 1198; (6) failure to provide accurate wage statements in violation
24 of Labor Code Section 226; (7) waiting time penalties under Labor Code Sections 201-
25 203; and (8) unfair business practices in violation of California Business and Professions
26 Code Sections 17200, *et seq.* Nance purports to represent "[a]ll current and former
27 hourly, nonexempt workers employed by Ryder Integrated Logistics, Inc. and/or Ryder
28 System, Inc. throughout California any time starting four years prior to the filing of this

1 Complaint [*i.e.*, March 13, 2019] until the resolution of this action.

2 On May 26, 2023, Nance filed a separate action against Ryder Integrated Logistics,
3 Inc. and Ryder System, Inc. seeking penalties under the California Private Attorneys
4 General Act (“PAGA”) predicated on the claims alleged in *Nance I*, in the California
5 Superior Court for the County of Alameda (Case No. 23CV034484), which is currently
6 pending before the Honorable Troy L. Nunley in the United States District Court for the
7 Eastern District of California, Case No. 2:23-cv-02357-TLN-JDP (“*Nance II*”). In *Nance*
8 *II*, Nance purports to assert these claims for PAGA penalties on behalf of herself and all
9 current and former non-exempt hourly workers employed by Ryder Integrated Logistics,
10 Inc. and Ryder System, Inc. in California at any time from February 13, 2022 until the
11 termination of the action.

12 Defendants’ counsel informed us that on October 10, 2023, they held a meet and
13 confer conference with Nance’s counsel. During that conversation, Defendants’ counsel
14 informed Nance’s counsel that the mediation scheduled to cover the *Perkins* action
15 and *Johnson* action would cover the entirety of the putative class and representative
16 groups in *Nance I* and *Nance II*. On October 20, 2023, Defendants’ counsel informed
17 Nance’s counsel that additional parties would not be invited to the mediation, as the class
18 definition in *Perkins* is broader than the class definition in *Nance I*. October 26, 2023,
19 Defendants’ counsel informed Nance’s counsel that the mediation covering both
20 the *Perkins* action and the *Johnson* action was successful and explained that Nance’s
21 class action lawsuit and her representative action lawsuit were fully encompassed by the
22 settlement in this action. All of the claims alleged in *Nance I* and *Nance II* are released
23 by the settlement in the instant action.

24 **Keefer**

25 On October 27, 2023, Salnave J. Keefer filed his putative class action against
26 Ryder Integrated Logistics, Inc. and Ryder Integrated Logistics of California Contractors,
27 LLC, styled *Salnave J Keefer, on behalf of himself and all others similarly situated v.*
28 *Ryder Integrated Logistics, Inc. & Ryder Integrated Logistics of California Contractors,*

1 *LLC*, in Los Angeles County Superior Court (Case No. 23STCV26430), pending before
2 the Honorable Maren Nelson of Department 17. (“*Keefer Action*”). In the *Keefer Action*,
3 the plaintiff Salnave J Keefer alleges claims for: (1) failure to provide meal periods, (2)
4 failure to provide rest periods, (3) failure to pay hourly wages, (4) failure to indemnify,
5 (5) failure to provide accurate written wage statements, (6) failure to timely pay all final
6 wages, and (7) unfair competition. Keefer seeks to represent a putative class defined as
7 “all persons employed by [Ryder Integrated Logistics, Inc. and Ryder Integrated
8 Logistics of California Contractors, LLC] and/or any staffing agencies and/or any other
9 third parties in hourly or non-exempt positions in California during the period from
10 October 27, 2019 to the date of judgment in the action.” Defendants’ counsel informed
11 us on January 4, 2024, they held a meet and confer conference with Keefer’s counsel.
12 During that meet and confer conference, Defendants’ counsel informed Keefer’s counsel
13 of the *Perkins/Johnson* settlement and explained that the *Keefer Action* was fully
14 encompassed by the settlement in this action. All of the claims alleged in
15 the *Keefer Action* are released by the settlement in the instant action.

16 Although Defendants fully denied, and continue to deny, the factual and legal
17 allegations in this case and believe they have valid defenses to Plaintiffs’ claims, the
18 Parties agreed to submit the matter to mediation before expending substantial time and
19 fees on discovery disputes and the class certification process. In preparation for
20 mediation, the Parties engaged in an extensive informal discovery process where
21 information, correspondence, documents, and legal analysis were exchanged, including
22 procedures, payroll, and timekeeping records, and evidence relating to the class size.
23 Defendants also provided Plaintiffs with a significant sampling of timekeeping and
24 payroll records amounting to nearly 100,000 shifts worked. The informal exchange
25 enabled Plaintiffs to look deeply into the validity of the claims and Defendants’ defenses,
26 enabling Plaintiffs and their counsel to analyze, research, and investigate the potential
27 claims of all similarly situated employees. (Bokhour Decl. ¶ 14).

28 On October 24, 2023, Plaintiffs and Defendants engaged in mediation before Mr.

1 Antonio Piazza, Esq., an experienced mediator in this area of law. The mediation was
2 successful and a global settlement in principle was reached and the Parties entered into a
3 Memorandum of Understanding. Thereafter, the Parties memorialized the terms of the
4 settlement in a long-form Settlement Agreement (Bokhour Decl., Exhibit 1), which was
5 negotiated following the mediation. (Bokhour Decl. ¶ 15).

6 **B. SUMMARY OF CLAIMS AND DEFENSES**

7 Plaintiffs were employed by Defendants as truck drivers, warehouse associates,
8 and material handlers. Plaintiffs contend that Defendants' non-exempt California
9 employees have all been governed by the same basic compensation plans and policies
10 governing wage payment, meal/rest breaks, sick pay, and bonus plans, which Defendants
11 dispute. (Bokhour. ¶ 16).

12 Plaintiffs' operative Complaint alleges various violations of the California Labor
13 Code. For instance, Plaintiffs alleges that, at all relevant times, Defendants employed a
14 uniform timekeeping policy and practice that failed to account for all time work by
15 Plaintiffs and other truck driver, warehouse associates, and material handler employees.
16 However, Defendants vehemently opposed this claim, arguing that their timekeeping
17 policy complied with California law and exhaustive compliance practices, including but
18 not limited to timekeeper acknowledgment forms to confirm that all hours worked were
19 recorded or, if there was an error on the timesheet, required to fill out a timesheet edit
20 form. (Bokhour Decl. ¶ 17).

21 Additionally, Plaintiffs claim that Defendants failed to pay overtime properly and
22 minimum wages were predicated on an off-the-clock theory and regular rate theory, as
23 well as sick pay wages due to the failure to include all earned compensation in the
24 calculation for the regular rate of pay. Defendants deny this claim because any regular
25 rate calculations were accurate and the bonuses paid to the Class Members were allegedly
26 discretionary in nature and, therefore, need not be included in the calculations for
27 overtime compensation. (Bokhour Decl. ¶ 18).

28 Defendants denied these claims on grounds that their policies prohibit off-the-

1 clock work, and further provide an avenue for employees to report any off-the-clock
2 given that all hours worked must be recorded. Plaintiffs also alleged that Defendants
3 failed to implement an Alternative Workweek Schedule and thus failed to pay all
4 overtime wages owed. (Bokhour Decl. ¶ 19).

5 Plaintiffs also alleged that warehouse associates were often subjected to meal
6 period violations due to late first meals (after the fifth hour of work), short meal periods
7 (less than 30 minutes in length) and no (or late or short) second meal periods for shifts
8 over 10 hours. (Bokhour Decl. ¶ 20). And the same facts that denied Class members the
9 ability to take compliant meal periods also resulted in a failure to provide compliant off-
10 duty rest breaks. Defendants refuted each of these allegations, arguing that the Class
11 Members were provided all mandated breaks pursuant to compliant written policies
12 regarding the provision and timing of meal periods and rest breaks, and procedures that
13 ensured meal and rest period compliance, including weekly timekeeping
14 acknowledgement forms to report any meal or rest period that was not provided and a
15 premium paid. (Bokhour Decl. ¶ 21).

16 Finally, Plaintiff argued that Defendants paid failed to pay all wages due and
17 owing to the Class Members upon separation due to the various unpaid wage claims
18 discussed above. Defendants denied that it failed to pay any wages and further argued
19 that any underpayment, if it occurred, was not intentional or willful as required to impose
20 waiting time penalties under Labor Code § 203. (Bokhour Decl. ¶ 22).

21 Defendants also argued that there are substantive reasons that would prevent
22 certification of the Class. First, in addition to disputing the merits of Plaintiffs' claims,
23 Defendants disputed that Plaintiffs could obtain class certification, arguing a lack of
24 commonality of the legal claims and injuries, lack of ascertainability, lack of superiority,
25 among other arguments. Defendants further argued that they complied with the
26 applicable law and that any purported deviations therefrom were individualized in nature,
27 thereby limiting Plaintiffs' ability to certify the class. While Plaintiffs assert that this is a
28 suitable case for certification, Plaintiffs realize there are significant risk associated with

1 class certification proceedings, which could significantly limit the claims that he could
2 pursue on a class basis. (Bokhour Decl. ¶ 23). Plaintiffs further argued that they and the
3 other PAGA Employees were entitled to civil penalties under PAGA derivative of the
4 afore-referenced claims. (Bokhour Decl. ¶ 24).

5 In conclusion, each of the claims was vehemently refuted and disputed by
6 Defendants.

7 **II. SUMMARY OF THE PROPOSED SETTLEMENT**

8 The following is a summary of the principal terms of the Settlement Agreement:

9 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

10 The Gross Settlement Amount of \$2,950,000.00 is non-reversionary. The Net
11 Settlement Amount will be paid to Participating Class Members (defined as all Class
12 Members except those who opt-out) without the need to submit a claim form or take any
13 affirmative action. Under no circumstance will any portion of the GSA revert to
14 Defendants. The GSA includes all Individual Settlement Amounts payable to the
15 Participating Class Members, amounts awarded to Class Counsel for attorneys' fees and
16 litigation costs, the service award to the Plaintiffs, the payment to the LWDA and PAGA
17 Employees to resolve claims under the PAGA, and Settlement Administration Costs.
18 Defendants will separately pay their share of employer-side payroll taxes as required by
19 law. (*Id.*)

20 After all Court-approved deductions from the GSA, it is estimated that
21 **\$1,761,666.67** will be available to pay the Individual Settlement Amounts to the
22 approximately 5,375 Class Members who do not opt-out of the settlement.

23 Counsel shall provide a copy of the Settlement Agreement to the LWDA
24 concurrent with the filing of this motion for preliminary approval, in accordance with
25 California Labor Code Section 2699(1)(2).

26 **B. NOTICE PROCEDURES**

27 The proposed Notice of Class and PAGA Settlement ("Notice"), subject to Court
28 approval, is attached as Exhibit 2-1 to the Bokhour Declaration. Within 30 days after

1 entry of the Preliminary Approval Order by the Court, Defendants shall provide the
2 Settlement Administrator with Class Data (i.e., a list of Class Members and the total
3 numbers of Workweeks and Qualifying Pay Periods applicable to the Class Member
4 and/or PAGA Employee). (S.A., § 92).

5 Within 15 days after receiving the class data, the Settlement Administrator will
6 determine the estimated Settlement Payment Rate, and PAGA Payment Rate, and
7 estimated Individual Settlement Amount for each Class Member and PAGA Payment
8 Share to each PAGA Employee, as applicable, and populate the Class Notice for each
9 Class Member. Within forty-five (45) days of the date of preliminary approval of this
10 settlement, the Settlement Administrator shall mail by First-Class United States mail the
11 Notice to each Class Member and PAGA Employee, all in English and Spanish, using the
12 most recent address available to the Settlement Administrator for mail delivery. In an
13 effort to ensure that the Notice is received by all Class Members, Settlement
14 Administrator will update the addresses for the Class Members using the National
15 Change of Address database. In the event that any Notice is returned as undelivered, the
16 Settlement Administrator shall perform a skip trace search and seek an address correction
17 for such Class Member(s), and a re-mail the Class Notice to any new or different address
18 that is obtained. (S.A., § 71).

19 Within 10 days after filing of this Motion, Defendants shall serve all necessary
20 Attorney Generals a notice of the proposed settlement, including the information and
21 materials listed in 28 U.S.C. § 1715(b)(1)-(8), as required by CAFA. (S.A., § 114).

22 **C. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

23 The Net Class Settlement Amount of approximately \$1,761,666.67 will be paid to
24 the Settlement Class Members on a pro rata basis according to the number of Workweeks
25 Worked for Defendants in California during the Class Period pursuant to paragraph 84 of
26 the settlement agreement.

27 The PAGA Payment Shares to each PAGA Employee shall be fairly apportioned
28 and determined based on the number of Qualifying PAGA Pay Periods applicable to each

1 PAGA Employee pursuant to the allocation in paragraph 85 of the settlement Agreement.

2 The Notice will inform each Class Member of the number of Workweeks and
3 Qualifying Pay Periods applicable to the Class Member and/or PAGA Employee, the
4 estimated Settlement Payment Rate, and PAGA Payment Rate, as applicable, to the Class
5 Member and/or PAGA Employee, and the estimated gross Individual Settlement Payment
6 and PAGA Payment Share that the Class Member and/or PAGA Employee shall receive
7 if the Court grants final approval of the settlement.

8 A Class Member or PAGA Employee may dispute the number of Workweeks or
9 Qualifying PAGA Pay Periods assigned to him or her by the Settlement Administrator by
10 submitting Proof of Work documentation to the Settlement Administrator.

11 **D. DISTRIBUTION OF UNCLAIMED SETTLEMENT SHARES AND UNCASHED**
12 **CHECKS**

13 Participating Class Members will have 180 days to cash a settlement check. If a
14 Participating Class Member fails to timely cash a check, then the Settlement
15 Administrator shall deposit the unclaimed funds to the California State Controller's
16 Office in the name of the Participating Class Member or PAGA Employee. (S.A., § 89).

17 **E. EXCLUSION AND OBJECTION PROCEDURES**

18 Class Members who do not submit a timely Request for Exclusion (*i.e.*, opt-out)
19 will be deemed to participate in the Settlement and shall become a Participating Class
20 Member without having to submit a claim form or take any other action. To opt-out of
21 the Settlement, the Class Member must submit a written request to the Settlement
22 Administrator no later than 45 days after being mailed by the Settlement Administrator
23 ("Notice Response Deadline"). Any Opt-Out Request that is not postmarked by the
24 Notice Response Deadline will be invalid, unless both Parties agree to accept the late
25 Opt-Out Request.

26 The Class Notice shall inform the Class Members of their right to object to the
27 Settlement. Any Class Member who wishes to object to the Settlement must submit a
28 written objection to the Settlement Administrator no later than the 45-day Notice

Response Deadline, stating the basis of the objection.

F. PARTICIPATING CLASS MEMBERS' AND PAGA EMPLOYEES' RELEASE OF CLAIMS

Plaintiffs and the Participating Class Members' release of the Released Claims are narrowly limited to the claims alleged in Plaintiffs' Second Amended Complaint, every Complaint in the Civil Action, and the facts alleged in the PAGA Letters sent by Plaintiffs to the LWDA, or that could have been alleged based on the allegations, facts, matters, transactions or occurrences therein. (S.A. § 100). The release of Released Class Claims is also limited to the Class Period. (S.A. § 100). The PAGA Released Claims include any and all claims for civil penalties under PAGA based on the Labor Code violations alleged or that could have been alleged based on the allegations, facts, matters, transactions or occurrences therein. (S.A. § 102).

G. TIMING OF SETTLEMENT DISBURSEMENTS

Within 10 business days after the Effective Date (which is the thirty (30) days have passed after the notice of entry of the Final Order and Judgment if no Class Member timely and properly intervenes or files a motion to vacate the Judgment, or if either of these occur then after the deadline to file an appeal or the resolution of any filed appeal), Defendants shall deposit \$2,950,000.00 into a Qualified Settlement Fund to be established by the Settlement Administrator (plus the employer's share of payroll taxes and withholdings). After the Effective Date, the Gross Settlement Amount will be used to fund: the (i) Individual Settlement Amounts of the Participating Class Members; (ii) amounts awarded to Class Counsel for attorneys' fees and litigation costs, (iii) the service award to the Plaintiffs, (iv) the PAGA Fund (including payment to the LWDA and PAGA Employees) to resolve claims under the PAGA, and (v) Settlement Administration Costs. (S.A. § 86).

H. TAX TREATMENT

The Settlement Agreement provides that twenty-five (25%) of the amount distributed to each Settlement Class Member will be considered taxable wages (with IRS

W-2 reporting), and the remaining seventy-five (75%) to penalties and to interest (both with 1099 reporting). (S.A. § 96). Defendants' share of employer payroll taxes will be paid separately by Defendants. The Settlement Administrator will be responsible for issuing all tax forms and paying all deductions and withholdings from the GSA.

IV. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). "Voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation." *Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

When parties reach a settlement agreement prior to class certification, the Court has an obligation to "peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Preliminary approval of a class settlement is generally a two-step process. First, the Court must assess whether a class exists. *Id.* (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court must "determine whether the proposed settlement is fundamentally fair, adequate, and reasonable." *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). The decision to approve or reject a settlement is within the Court's discretion. *Hanlon*, 150 F.3d at 1026.

Class certification is governed by the Federal Rules of Civil Procedure, which provide that "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all." Fed. R. Civ. P. 23(a). Plaintiffs seek conditional approval of the class for settlement pursuant to Rule 23(c)(1), under which a court may "make a conditional determination of whether an action should be maintained as a class action, subject to final approval at a later date." *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461,

1 466 (E.D. Pa. 2000).

2 The parties have stipulated that the Court may, *for settlement purposes only*, certify
3 a Settlement Class. In the event this Settlement is either not granted preliminary or final
4 approval, or is reversed on appeal, Defendants reserve their right to oppose class
5 certification.

6 **A. THE SETTLEMENT SATISFIES THE REQUIREMENTS OF RULE 23(A)**

7 Parties seeking class certification bear the burden of demonstrating the elements of
8 Rule 23(a) are satisfied, and “must affirmatively demonstrate ... compliance with the
9 Rule.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Doninger v. Pacific*
10 *Northwest Bell, Inc.*, 563 F.2d 1304, 1308 (9th Cir. 1977). If an action meets the
11 prerequisites of Rule 23(a), the court must consider whether the class is maintainable
12 under one or more of the three alternatives set forth in Rule 23(b). *Narouz v. Charter*
13 *Communs., LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010).

14 The prerequisites of Rule 23(a) “effectively limit the class claims to those fairly
15 encompassed by the named plaintiff’s claims.” *General Telephone Co. of the Southwest v.*
16 *Falcon*, 457 U.S. 147, 155-56 (1982) (citing *General Telephone Co. v. EEOC*, 446 U.S.
17 318, 330 (1980)).

18 **1. Numerosity**

19 With approximately 5,375 Class Members, the numerosity requirement is met.

20 **2. Commonality**

21 Rule 23(a) requires “questions of law or fact common to the class.” Fed. R. Civ. P.
22 23(a)(2). Commonality “does not mean merely that [class members] have all suffered a
23 violation of the same provision of law,” but that their “claims must depend upon a
24 common contention.” *Dukes*, 564 U.S. at 350. In this case, because the parties have
25 resolved their disputes, they will not need to prove any individualized issues relating to
26 liability. As a result, the facts that define the class – their employment with Defendants
27 and being a member of the Class – satisfies Rule 23(a)(2)’s commonality requirement.
28

3. *Typicality*

The typicality requirement demands that the “claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The standards under this rule are permissive, and a claim or defense is not required to be identical, but rather “reasonably coextensive” with those of the absent class members. *Hanlon*, 150 F.3d at 1020. “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992); *see also Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir. 1995) (typicality is satisfied when named plaintiffs have the same claims as other members of the class and are not subject to unique defenses).

Here, Plaintiffs allege that they were subjected to Defendants’ uniform policies and practices that are at the core of the lawsuit, including alleged violations as alleged in the consolidated complaint. These are the same issues to which Plaintiffs allege all Class Members were also subjected. Therefore, the typicality requirement is satisfied.

4. *Fair and Adequate Representation*

Absentee class members must be adequately represented for judgment to be binding upon them. *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940). Accordingly, this prerequisite is satisfied if the “representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “[R]esolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000) (citing *Hanlon*, 150 F.3d at 1020).

Specifically, Plaintiffs are adequate to represent the class because they were employed by Defendants during the Class Period, alleges that they experienced the same wage and hour practices as the rest of the Class, understood their duties as Class

Representatives, have been willing to undergo the risk of litigation, and have no conflict of interest.

Adequacy of counsel 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.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiffs are represented by Class Counsel with extensive experience in wage and hour class actions, including class actions like the instant matter. (Bokhour Decl., ¶¶ 2-7; Falakassa Decl., ¶¶ 4-11; Hawkins Decl., ¶ 17).

B. CERTIFICATION OF A CLASS UNDER RULE 23(B)(3)

Once the requirements of Rule 23(a) are satisfied, a class may only be certified if it is maintainable under Rule 23(b). Fed. R. Civ. P. 23(b); *see also Narouz*, 591 F.3d at 1266. Plaintiffs assert that “parties agree for purposes of the Settlement only that certification of the Class is appropriate under Rule 23(b)(3) because the Settlement obviates the litigation of individual liability and damage issues, ‘questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and ... a class action is superior to other available methods for the fair adjudication of the controversy.’” (quoting Fed. R. Civ. P. 23(b)(3)). Therefore, the conditional class is maintainable under Rule 23(b)(3).

V. PRELIMINARY APPROVAL OF THE SETTLEMENT

Settlement of a class action requires approval of the Court, which may be granted “only after a hearing and on finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Approval is required to ensure the settlement is consistent with Plaintiff’s fiduciary obligations to the class. *See Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The Ninth Circuit has set forth a number of factors to determine whether a settlement agreement meets these standards, including: the strength of plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings;

1 the experience and views of counsel; the presence of a governmental participant; and the
2 reaction of the class members to the proposed settlement. *Staton*, 327 F.3d at 959.

3 Further, a court may consider whether settlement is “the product of collusion
4 among the negotiating parties.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458 (citing
5 *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992)). But “[t]he court need
6 not reach any ultimate conclusions on the contested issues of fact and law which underlie
7 the merits of the dispute.” *Class Plaintiffs*, 955 F.2d at 1291.

8 **A. THE SETTLEMENT FALLS WELL WITHIN THE RANGE OF POSSIBLE**
9 **APPROVAL**

10 To determine whether a settlement “falls within the range of possible approval,” a
11 court focuses on “substantive fairness and adequacy,” and “consider plaintiffs’ expected
12 recovery balanced against the value of the settlement offer.” *In re Tableware Antitrust*
13 *Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). “Of course, the very essence of a
14 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.”
15 *Officers for Justice v. Civil Service Com’n of City and County of San Francisco*, 688 F.2d
16 615, 624 (9th Cir. 1982).

17 Of particular relevance to the reasonableness of the proposed Settlement is the fact
18 that significant legal and factual grounds for defending this action exist. Defendant s
19 argued that they complied with the applicable law and that any purported deviations
20 therefrom were individualized in nature, thereby limiting Plaintiffs’ ability to certify the
21 class claims. While Plaintiffs assert that this is a suitable case for certification, there is
22 always a significant risk associated with class certification proceedings, which could
23 significantly limit the claims that could be pursued on a class basis.

24 In light of the uncertainties of protracted litigation and the state of the law
25 regarding the legal positions of the parties, the settlement amount reflects the best
26 practicable recovery for the Class Members. Based upon detailed data obtained through
27 discovery and information exchanges prior to and during mediation, and factoring in
28 claim certification probabilities and liability probabilities, Plaintiffs analyzed the

1 maximum theoretical and risk-adjusted values, as discussed below.

2 Plaintiffs first alleges that Defendants employed a uniform timekeeping policy
3 and practice that failed to account for all time work by truck driver employees. In
4 practice, Defendants' policies/practices result in a systematic underpayment of wages to
5 the truck drivers Class Members during each shift. Based on data and information
6 gathered in discovery and informally prior to mediation, as well as an analysis of such
7 data by a retained expert, Plaintiffs allege that the truck driver Class Members were
8 underpaid for approximately 5 minutes (0.08 hours) per shift on average during the
9 applicable period, with an effective rate of pay of \$23.18 per hour. Because there were
10 625,057 shifts worked by the truck driver Class Members, the maximum potential
11 damages for this claim is \$1,159,105 (625,057 shifts x 0.08 hours underpaid per shift x
12 \$23.18). (Bokhour Decl. ¶ 25).

13 But this maximum figure ignores Defendants' multiple defenses regarding the off-
14 the-clock claim. First, Defendants argued that it would defeat certification on this claim
15 because their pay plans adequately compensated the truck drivers' Class Members, and
16 any determination regarding the minutes or frequency of the clockwork would be highly
17 speculative and individualized. Based on this argument and others, the Plaintiffs
18 assigned a 40% risk that the Court would deny class certification on the off-the-clock
19 claims. Additionally, Defendants alleged that, if certification were granted, it would
20 defeat the claim on the merits at summary judgment or at trial because its policies were,
21 at all times, facially neutral in compliance with California law. Plaintiffs assigned an
22 additional 40% discount for risks at the merits stage, resulting in a total risk-adjusted
23 value for the off the clock claim of \$417,278.05. (Bokhour Decl. ¶ 26).

24 Plaintiffs also alleged two other forms of unpaid wage claims on behalf of the
25 Warehouse Associates: (1) unpaid overtime due to the failure to incorporate earned
26 bonuses in the calculations for the regular rate of pay and corresponding overtime
27 payments, and (2) failure to pay overtime wages due to Defendants use of an alternative
28 workweeks schedule. However, these claims each had a very low per-person and total

1 value, and the true value lies in the accompanying claim for waiting time penalties under
2 Labor Code § 203. (Bokhour Decl. ¶ 27).

3 In regard to the waiting time penalty claim, there were approximately 3,324 Class
4 Members who separated from their employment with Defendants during the statutory
5 period. As such, the maximum potential penalty under Labor Code § 201 – 203 is
6 \$18,492,076 (3,324 workers x 8 hours per day x average rate of \$23.18 x 30 days).
7 However, Defendants argued that it would defeat the waiting time penalty claim as to the
8 Plaintiffs’ unpaid wages claim because the failure to pay wages, if any, was not willful
9 given the Defendants’ alleged facial neutral policy. Plaintiffs applied the Risk Factors
10 and adjusted the waiting time claim for a reasonable 20% recovery value at
11 approximately \$3,698,415. (Bokhour Decl. ¶ 29).

12 With regard to Plaintiffs’ meal and rest break claims, Defendants argued that
13 notwithstanding it has always maintained compliant written meal period policies in its
14 Employee Handbook, Plaintiffs’ claims for meal and rest period as to the truck drivers
15 were preempted by Federal Motor Carrier Safety Administration’s (“FMCSA”)
16 determination that interstate motor carriers are exempt from California’s meal-and-rest-
17 break rules. (See *International Brotherhood of Teamsters, Local 2785 v. Federal Motor*
18 *Carrier Safety Administration*, No. 18-73488 (2021) [The Ninth Circuit concluded that
19 the FMCSA properly determined that California’s meal and rest break rules were state
20 regulations “on commercial motor vehicle safety so that they were within the agency’s
21 pre-emption authority”].) Notwithstanding these arguments, Plaintiffs discounted the
22 meal and rest break claims for the driver. The Class Members who are warehouse
23 associates and who were arguably not subject to the FMSCA pre-emption, worked
24 approximately 870,353 shifts during the applicable period. Based on an alleged 45%
25 violation rate for the meal period claims, as extrapolated from the pre-mediation
26 sampling, and a conservative 25% violation rate for the rest break claims, the maximum
27 potential damages are \$7,245,688 and \$4,025,382, respectively. (Bokhour Decl. ¶ 30).

28 However, Defendants vehemently opposed these claims and asserted that a

1 fact-finder would have to determine for each Class Member whether a break was missed
2 and why a break was noncompliant/nonexistent, because if it was by the employee's
3 choice, no liability attaches to the defendant. As discussed in detail in the Bokhour
4 declaration, Plaintiffs calculated the risk-adjusted value of the meal claims to be
5 \$1,449,137 and the rest break claims to be \$805,076. (Bokhour Decl. ¶ 31).

6 Plaintiffs estimates the maximum potential penalties for the wage statement claims
7 as \$13,372,900 (based on approximately 133,729 wage statements allegedly violative
8 wage statements issued during the Class Period). Defendants mounted a strong challenge
9 to this claim based on the argument that the wage statement was facially compliant thus
10 satisfying the purpose and language of Labor Code § 226(a). See *Mejia v. Farmland*
11 *Mutual Insurance Company* (E.D. Cal. 2018) 2018 WL 3198006. Based on this
12 argument, Plaintiffs assigned a 70% risk at the class certification stage and a 50% risk on
13 the merits, thus creating a risk-adjusted value for the wage statement claim of
14 \$2,005,935. (Bokhour Decl. ¶ 32).

15 Finally, Plaintiffs further alleged that Defendants failed to reimburse the Class for
16 expenses incurred to carry out their duties, including the cost to acquire and maintain a
17 smartphone and related monthly plan to communicate with Defendants. Based on these
18 claims, Plaintiffs' counsel estimated that Class Members incurred \$25 in unreimbursed
19 expenses per month. Thus, the maximum potential value of the unreimbursed expense
20 claim was \$2,615,660. (Bokhour Decl. ¶ 33).

21 However, Defendants argued that this claim had no merit because its policy did
22 not require or even encourage the Class to use personal cellular phones or incur other
23 expenses to carry out their duties for the company and such a claim could not be
24 certified as individualized assessments were required as to whether a Class Member
25 incurred expenses, why they did so, whether each expense was "necessary," and how
26 frequently it happened. Plaintiffs acknowledged the risk factors risks and incorporated a
27 further 75% reduction to arrive at \$653,900. (Bokhour Decl. ¶ 34).

28 In sum when factoring in defenses and risks of ongoing litigation,

1 Plaintiffs estimates the risk-adjusted class recovery as follows:

2	• Overtime/Minimum Wage:	\$417,278.05
3	• Labor Code §§ 201 – 203 Claims:	\$3,698,415
4	• Meal Period Claims:	\$1,449,137
5	• Rest Break Claims:	\$805,076
6	• Wage Statement Claims:	\$2,005,935
7	• Failure to Reimburse Claim:	\$653,900
7	• <u>TOTAL RISK-ADJUSTED PENALTIES AND DAMAGES:</u>	\$9,029,741.05

8 Plaintiffs also sought PAGA penalties for each violation for which they are
9 available and alleged that these penalties can be “stacked.” *See Gonzalez v. Corecivic of*
10 *Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12,
2018) (“‘stacking’ PAGA penalties is not inappropriate under California law”).

11 Assuming that a PAGA penalty is available in the default amount of \$100 per pay period
12 and is not reduced, the maximum potential PAGA penalty would be \$13,372,900 per
13 claim for the 133,729 pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2);
14 (Bokhour Decl. ¶ 35).

15 However, this maximum figure fails to account for numerous unclear issues
16 relating to PAGA claims. First, it is unclear whether stacking is permissible and/or
17 whether the court would award penalties in such a way (especially for purely derivative
18 penalties). Second, the maximum figure fails to acknowledge that courts have wide
19 latitude to reduce the amount of civil penalties “based on the facts and circumstances of a
20 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary
21 and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F.
22 Supp. 3d 1030, 1037 (N.D. Cal. 2016).

23 Given the realistic value of Plaintiffs’ claims, the \$2,950,000.00 settlement is an
24 excellent result for the Class, considering that the settlement amount totals approximately
25 32% of Plaintiffs’ risk-adjusted value of the case. (Bokhour Decl. ¶¶ 36, 37).

26 **B. RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER**
27 **LITIGATION AND/OR OF OBTAINING CLASS STATUS**

28 Approval of settlement is “preferable to lengthy and expensive litigation with

uncertain results.” *Nat’l Rural Telecomms. Coop. v. PENTAIR, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). If the settlement were to be rejected, the parties would have to engage in further litigation, including litigating the propriety of certifying the class and, if certified, discovery on damages issues. The time and expense of continued litigation, including the potential for appeals, could potentially outweigh any additional recovery obtained through successful litigation. On the other hand, the proposed settlement provides for immediate recovery for the class, which weighs in favor of approval.

Additionally, Plaintiffs further acknowledges that there is a substantial risk that a class may not be certified by the Court. See, e.g. *Brown v. Federal Express Corp.*, 249 F.R.D. 580 (C.D. Cal 2008); *White v. Starbucks Corp.*, 497 F. Supp. 2d 1080 (C.D. Cal. 2007). Defendants further argued that for the same reasons that class certification is inappropriate, Plaintiffs would be unsuccessful in establishing the propriety of a class action and/or PAGA representative action claim. See e.g., *Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 WL 117614, at *4 (N.D. Cal. Mar. 19, 2014) (striking as unmanageable PAGA claim seeking penalties for off the clock work, overtime, meal and rest periods, timely payment of wages and business expense reimbursement and wage statements); *Raphael*, 2015 WL 5680310, at *3-4 (C.D. Cal. Sep. 25, 2015) (dismissing as unmanageable PAGA action seeking penalties for off the clock work, overtime, meal and rest periods, timely payment of wages and business expense reimbursement and wage statements where individualized inquiries would be necessary). Thus, if litigation continued, there was a substantial risk that the Class Member may not recover any funds.

C. THE SETTLEMENT WAS THE PRODUCT OF INFORMED NEGOTIATIONS

The Settlement was reached after informed, arm’s length negotiations between the parties. The parties participated in mediation with a highly experienced and impartial mediator, Antonio Piazza, and settlement was eventually reached at the amount proposed by Mr. Piazza. (Bokhour Decl. ¶¶ 11, 13, 14).

D. The Attorneys’ Fees and Cost Allocation is Fair and Reasonable

The Settlement Agreement authorizes Class Counsel to seek up to 1/3 of

1 the Settlement Amount. Of course, Plaintiffs' counsel will submit a comprehensive
2 motion for attorneys' fees and costs within the Notice Periods and the deadlines set by
3 the Court that further discuss all of these factors. (Bokhour Decl. at ¶ 46).

4 **E. The Class Representative Service Awards Are Fair and Appropriate**

5 The Settlement Agreement authorizes an incentive award payment of up
6 to \$15,000.00 to each Class Representative. The Class Representatives assumed
7 significant risk in bringing this litigation. Moreover, had they lost, they could have been
8 ordered to pay Defendants' costs. Plaintiffs also provided invaluable assistance to Class
9 Counsel and the Class in this case, including providing factual background for the
10 mediation and the Complaint; providing documents about Defendants' compensation
11 plan; participating in phone calls to discuss litigation and settlement strategy; and
12 reviewing the settlement documents. Plaintiffs agreed to participate in this case with no
13 guarantee of personal benefit.

14 The requested service award falls within the range of incentive payments typically
15 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
16 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award
17 to each of the two class representatives in a trucker meal break class action; *Ross v. US*
18 *Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving
19 \$20,000 enhancement award to Class Representative in California wage-and-hour class
20 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D.
21 4150, 493 (approving service awards in the amount of \$15,000 each from a \$300,000
22 settlement fund in a wage/hour class action).

23 **VI. THE COURT SHOULD APPOINT ILYM GROUP AS**
24 **ADMINISTRATOR**

25 Subject to the Court's approval, the parties stipulated that ILYM Group would
26 serve as the Settlement Administrator. ILYM is experienced in administering class
27 action settlements and has agreed to administer this settlement not to exceed the
28 \$35,000.00 that the Parties agreed to in the Settlement Agreement. (Bokhour Decl. ¶ 47).

1 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

2 The Parties propose that the Court schedule a final approval hearing approximately
3 120 days after preliminary approval.

4 **VIII. CONCLUSION**

5 Based upon all of the foregoing, Class Counsel respectfully requests that the Court
6 preliminarily approve the Settlement Agreement and enter the [proposed] Order Granting
7 Preliminary Approval of Class Action Settlement and set a final approval hearing date for
8 sometime in October 2024.

9
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11 Dated: April 17, 2024,

JAMES HAWKINS APLC
BOKHOUR LAW GROUP, P.C.
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14
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