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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

PHILLIP BERNAL, TRUHILL NOEL, KHYELL MARTIN, DAMIEN MCNORTON, WADDIE EARNEST, GILBERT ESTRADA, CARMEN HERNANDEZ, and WENDY QUINTERO, individually, on behalf of themselves and all others similarly situated, Plaintiffs, v. EXPRESS MESSENGER SYSTEMS, INC., dba ONTRAC, a Minnesota Corporation, ONTRAC LOGISTICS, INC., a Delaware Corporation, and DOES 2-10, Inclusive, Defendants.	Case No. CIVSB2319614 ASSIGNED FOR ALL PURPOSES TO: The Honorable Joseph Ortiz Department S-17 **CLASS AND REPRESENTATIVE ACTION** **DECLARATION OF MAGGIE K. REALIN IN SUPPORT OF PLAINTIFFS' [UNOPPOSED] MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT** **(Hearing reserved per September 24, 2025 Minute Order)** Date: January 6, 2026 Time: 1:30 p.m. Dept. S-17 Complaint filed: August 15, 2023 Trial date: Not set

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I, Maggie K. Realin, declare as follows:

1. I am a Partner at the law firm of Cohelan Khoury & Singer, co-counsel of record for Plaintiffs Philip Bernal and Truhill Noel in this action. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class and Representative Action Settlement. The following facts are within my personal knowledge and if called to testify I could and would competently testify to them.

2. This Settlement includes six actions against OnTrac, three class actions and three PAGA actions, filed on behalf of non-exempt employees; the majority of whom are warehouse workers/package handlers.

3. The instant *Bernal* action was filed in this Court on August 15, 2023. Plaintiffs, who were employed as non-exempt warehouse workers, allege they performed off-the-clock work before and after their scheduled shifts. This included attending mandatory meetings to discuss daily package volumes and other operational matters. Additionally, Plaintiffs claim they were required to load, unload, and sort an average of six to eight trucks per shift, and were not permitted to leave until all packages were fully processed. As a result, they often worked through meal and rest breaks, or off the clock entirely.

4. Plaintiffs also claim they were required to use their personal cell phones for work-related tasks without receiving reimbursement, as the company did not issue work phones.

5. Further, at times, Plaintiffs reported to work but were called off or sent home early without reporting time pay. Plaintiffs also allege derivative wage statement and waiting time claims, as well as violations of the UCL.

6. On March 6, 2024, OnTrac filed a motion to compel arbitration. Bernal opposed the motion on the grounds that Plaintiffs, as transportation workers engaged in interstate commerce, were exempt from arbitration under the Federal Arbitration Act (FAA). Since the FAA did not apply, Plaintiffs contended that the California Arbitration Act (CAA) governed instead, and that Labor Code section 229 permitted Plaintiffs to pursue claims for unpaid wages despite the existence of arbitration agreements. Additionally, Plaintiffs argued that the class action waiver was unenforceable, citing the factors from *Gentry v. Superior Court* (2007) 42 Cal.4th 443.

7. On May 29, 2024, the court denied OnTrac's motion regarding Plaintiffs' claims for unpaid wages, allowing them to proceed on a classwide basis. The parties then agreed to mediation. The other five actions are currently stayed to allow all parties to focus on settlement efforts.

8. The Parties agreed that all Plaintiffs and their respective claims and causes of action will be incorporated in an amended complaint, to be filed in the *Bernal* action. Plaintiffs filed the Second Amended Complaint on November 19, 2025.

9. The Parties carefully investigated the claims and facts alleged in this action, and Plaintiffs have made a thorough study of the legal principles applicable to the claims asserted against Defendant. Plaintiffs received time and payroll data for <u>all</u> Class Members, as well as relevant policies and handbooks. As a result of careful investigation of the claims in this action, the Parties had a clear understanding of their respective claims and defenses.

10. On March 25, 2025, the Parties mediated this case before Kevin Barnes, Esq., a mediator vastly experienced in wage and hour class actions. Following the mediation session, Mr. Barnes issued a mediator's proposal, which the Parties accepted, reaching the settlement in principle. After additional months of arms'-length negotiations, the Parties finalized the terms of the settlement agreement.

11. Plaintiffs recognize several risks to succeeding on the merits in their respective class and/or PAGA actions. For example, in *Bernal*, although OnTrac's motion to compel arbitration was denied with respect to claims for unpaid wages, the claims for overtime, reporting time pay, and meal and rest breaks, and unreimbursed expenses, as well as derivative claims, were compelled to individual arbitration.

12. At the time of the settlement, OnTrac's identical motion to compel arbitration was pending in the second-filed class action, *Estrada*, before the same court and likely to meet the same outcome. Absent this settlement, OnTrac anticipated moving to dismiss or stay the third class action, *Hernandez*, as duplicative of *Bernal* and *Estrada*.

13. Although Plaintiffs allege they worked off-the-clock and were denied proper overtime, informal discovery showed that OnTrac's timekeeping policies appear lawful and forbid off-the-clock work, and OnTrac paid Plaintiffs substantial overtime.

14. There is no evidence of a policy or uniform practice to schedule split shifts. OnTrac would argue that any gaps in the time records reflect voluntary extended lunch breaks or approved absences for personal appointments, and therefore, no split shift premium is owed.

15. Regarding reporting time pay, pay and time records OnTrac produced for mediation purposes <u>for all Class Members</u> showed that Class Members were paid reporting time wages when they showed up for work but were not provided with work.

16. For rest breaks, premium calculations could present complicated issues, as employees did not have to clock out to take rest breaks, or otherwise record them.

17. OnTrac has facially lawful expense reimbursement policies and does not require that employees use their cell phones for work duties.

18. Further, to the extent Plaintiffs and other Class Members did not seek reimbursement of these expenses, this claim would be susceptible to summary judgment. No policy or practice exists allowing unlawful deductions from employee wages.

19. With respect to wage statement and untimely wages claims, they are derivative of Plaintiffs' unpaid time and reporting time claims, so if Plaintiffs do not prevail on the underlying claims, their derivative claims would also fail. Also, OnTrac will likely assert that wages that were not paid cannot form the basis of these derivative claims based on *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018).

20. Subject to Court approval, up to $1,575,000 or 35% of the Gross Settlement Amount, may be allocated to attorneys' fees, and up to $55,000 to litigation costs and expenses. Class Counsel will brief the fee application using both methodologies, as cross checks. Any portion of the requested attorneys' fees and costs not awarded to Class Counsel shall be part of the Net Settlement Amount to be distributed to Class Members.

21. The Parties agreed $450,000, or 10% of the Maximum Settlement Amount, will be allocated for payment under PAGA. Of this amount, 75% ($337,500) will be paid to the LWDA, and 25% ($112,500) to Aggrieved Employees. The PAGA penalties under this Settlement represent approximately 2.72% of the total potential maximum PAGA penalties for Plaintiffs' claims (165,291 pay periods within the applicable statute of limitations *$100 = $16,529,100 in total unstacked

PAGA penalties).

22. The Parties estimate there were approximately 587,636 workweeks worked by the 26,437 class members during the class period. On average, a participating class member may expect to receive approximately $3.84 per workweek or $85.

23. The Parties selected ILYM Group, Inc. as the Settlement Administrator in this action. The Parties obtained bids from four settlement administrators, and ILYM's was the most suitable bid.

24. Plaintiffs retained an expert to analyze the data produced for all Class Members. Based on the expert's analysis, Plaintiffs estimate that Defendant's maximum potential exposure is as follows:

i. Unpaid wages (off-the-clock work) **$3,374,107.20**. This is based on Plaintiffs' estimation that Class Members worked on average 5 minutes off-the-clock every day. Per the expert's review of class data, this results with 198,945 unpaid hours. When multiplying by the average hourly rate of $16.96, the Defendant's off-the-clock exposure is $3,374,107.20. [This includes nominal exposure for Plaintiffs' split shift claims, as there is no evidence in documents OnTrac produced of a policy or uniform practice to schedule split shifts].

ii. Unpaid overtime: **$647,982.24.** Per the expert's review of class data, about 11.35% of all shifts are eight hours or more, so the off-the-clock work should be calculated at an overtime rate for those hours, as follows: 25,471 hours at $25.44 overtime rate, resulting in $647,982.24 in unpaid overtime.

iii. Reporting time pay: **$3,351,147,77.** The time and pay records show Class Members were paid reporting time pay when they reported to the worksite but were not provided with work. On rare occasions, estimated at once every two months, Class Members would be called off work telephonically. The average shift length time is 5.38 hours, so Class Members should be paid reporting time wages for at least 2.69 hours (half of shift), which at $16.96 amounts to $45.62 for each shift. Thus, the reporting time pay calculation is as follows: 587,636 pay periods/8 (73,454) times

5.38 hours/2 (2.69) times $16.96 = **$3,351,147,77.**

iv. Meal break premiums: **$1,697,780.80**. Per expert's time card review, 3.72% of eligible shifts show a missed, short, or late meal break, so the exposure is as follows: 100,105 shifts times $16.96 = $**1,697,780.80.**

v. Rest break premiums: **$12,421,368.32.** This is based on Plaintiffs' estimate that Class Members were unable to take a rest break at about one-third of eligible shifts (732,392) times $16.96 = **$12,421,368.32.**

vi. Unreimbursed cell phone expenses: **$2,922,898.96** for $20 per month in cell phone reimbursements ($5 per pay period times 587,636 pay period minus $15,281.04 in reimbursements OnTrac has made = $2,922,898.96).

vii. Wage statement penalties: **$15,207,250**. 26,437 pay periods at $50 for the first violation = $1,321,850, plus 138,854 subsequent pay periods at $100 (165,291-26,437) = $13,885,400, for a total of $15,207,250.

viii. Waiting time penalties: **$58,174,034.69**. There are 21,252 former employees within the applicable limitations period. Thus, OnTrac's exposure for this claim is as follows: 5.38 average hours worked daily at $16.96 x 30 days x 21,252 employees = $58,174,034.69.

25. Thus, OnTrac's maximum realistic liability for Plaintiffs' direct claims is **$24,415,285.29**, and an additional **$73,381,285** for Plaintiffs' derivative wage statement and waiting time penalties claims, possible only if Plaintiffs prevailed on their underlying claims, for a total of **$97,796,569.98, without applying any discounts**. Thus, the Gross Settlement Amount of $4,500,000 represents 18.43% of Defendant's maximum realistic liability for Plaintiffs' direct claims, and 4.60% of Defendant's maximum realistic liability for all Plaintiffs' claims.

26. Before settling this action, the Parties had a thorough understanding of their respective claims and defenses.

27. The consolidated actions were at different stages of litigation, up to an including an appeal (*McNorton* action). Motion practice occurred in *Bernal* and *Estrada*. Before mediation, Class Counsel had investigated Class Members' claims, examined documents and data, and performed

damage calculations.

28. At the time the parties engaged in mediation, they knew and understood their respective positions.

29. As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the Settlement with OnTrac is fair, reasonable, adequate, and in the best interest of the Class.

30. I have no conflicts of interest with the class or with the class representative. I am not related to the representative Plaintiffs. I do not represent opposing factions within the class in that all claims are predicated upon the same theories of liability and benefit all class members equally. In sum, I am well–suited to act as Class Counsel and will continue to vigorously represent the interests of the class.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration is executed on December 10, 2025, in San Diego, California.

Maggie K. Realin