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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA

GENARO CAMPOS, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

RL ON-TIME DELIVERY SERVICE,
INC.; FEDEX GROUND PACKAGE
SYSTEM, INC.; and DOES 1-100,
inclusive,

Defendants.

Case No. 56-2023-00575742-CU-OE-VTA

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT, CLASS
REPRESENTATIVE ENHANCEMENT
AWARD, and CLASS COUNSEL AWARD;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION**

**[Filed Concurrently with Declaration of Matthew
H. Fisher and [Proposed] Order]**

Date: September 20, 2024
Time: 8:20 AM
Dept: 40

Honorable Mark S. Borrell

Action Filed: February 17, 2023
Trial Date: TBD

1 **TO THIS HONORABLE COURT, ALL INTERESTED PARTIES, and THEIR**
2 **ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on September 20, 2024 at 8:20
3 a.m., or as soon as the matter may be heard, in Department 40 (Hon. Mark S. Borrell) of the above
4 entitled Court located at Ventura County Superior Court - Hall of Justice 800 South Victoria Ave
5 Ventura, CA 93009, Plaintiff Genaro Campos (“Plaintiff”) pursuant to California Code of Civil
6 Procedure §382 and California Rules of Court, rule 3.769, *et seq.*, will and does move this Court
7 for an Order granting final approval of the proposed class action and PAGA settlement on the
8 terms and conditions that this Court has previously approved (“The Motion”). The Motion is
9 *unopposed*, and is made pursuant to the California Code of Civil Procedure §382 and California
10 Rules of Court, rule 3.769, *et seq.*, and the Amended Order Re: Preliminary Approval Of Class
11 And Representative Action Settlement And Conditional Certification (“Preliminary Approval
12 Order”). Specifically, Plaintiff moves the Court for an Order:

- 13 1. Approving the Class Settlement (**\$250,000** Gross Settlement Fund);
- 14 2. Certifying the proposed Class, for settlement purposes only;
- 15 3. Appointing Plaintiff Genaro Campos as “Class Representative”, for settlement
16 purposes only;
- 17 4. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as Class
18 Counsel, for settlement purposes only;
- 19 5. Approving the Class Representative’s Enhancement Award to the Class
20 Representative for his service to the Class and taking the risks of bringing this
21 Action as a class action, which has resulted in substantial benefits to the Class, in
22 an amount of \$10,000;
- 23 6. Approving a Class Counsel Award of reasonable attorneys’ fees of **\$83,333** to
24 Class Counsel plus reimbursement of **\$20,000 for litigation costs** incurred in
25 pursuing the claims;
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7. Approving the PAGA Penalty Amount payment for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”) of **\$5,000** (75% of this amount [**\$3,750**] paid to the California Labor and Workforce Development Agency [“LWDA Payment”] and 25% to this amount [**\$1,250**] paid back to the PAGA group [“PAGA Group Amount”]).
 8. Approving the Settlement Administration Costs of **\$10,000** paid to CPT Group, Inc. (“CPT”) for settlement administration costs;
 9. Directing the Parties to implement the terms of the Settlement; and
 10. Entering a Judgment approving the Settlement and retaining jurisdiction over the parties to enforce the terms of the judgment.

12 This unopposed Motion will be based upon: this Notice; the attached Memorandum of
13 Points and Authorities; the concurrently filed Declarations of Class Counsel, the Class
14 Representative, and the Settlement Administrator Representative; and the records and files in this
15 action, and any other further evidence or argument that the Court may properly receive at or
16 before the hearing. Pursuant to Labor Code § 2699(1)(2), and the instructions provided by the
17 Department of Industrial Relations on its web site, a PDF copy of this motion and the supporting
18 papers will be sent/uploaded electronically to LWDA’s website at the time it is filed and served. A
19 copy of the proof of that LWDA submission is attached to Declaration of Matthew H. Fisher.

20
21 **DATED:** August 20, 2024

DA VEGA | FISHER | MECHTENBERG LLP

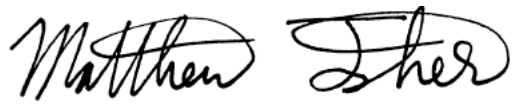
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24 By: 
25 Matthew H. Fisher
26 Attorneys for Plaintiff and Proposed Class
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TABLE OF CONTENTS

I.	INTRODUCTION.....	6
II.	KEY TERMS OF THE SETTLEMENT.....	8
	A. The Definition of the Settlement Class.....	8
	B. The \$250,000 Gross Settlement Fund.....	9
	C. Net Settlement Fund.....	9
	D. Individual Settlement Payments.....	9
	E. Released Claims.....	10
	F. Attorneys' Fees and Incurred Expenses.....	11
	G. Payments to LWDA and Settlement Administrator.....	11
	H. Class Representative Enhancement/Service Awards.....	11
	I. Notice Period and Response/Opt-Out Deadline.....	11
III.	FACTUAL BACKGROUND.....	12
	A. Plaintiff's Allegations.....	12
	B. Defendants' Response.....	12
IV.	PROCEDURAL HISTORY	13
V.	THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL	16
	A. The Parties Disputed the Merits of Plaintiffs' Case and Likelihood of Class Certification	18
	B. The Risk, Expense, And Complexity Of Continuing To Litigate The Action	12
	C. The Settlement Amount Offered To Class Members Is Fair And Reasonable.....	19
	D. The Settlement Agreement Is Fair And Reasonable	20
VI.	THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS REASONABLE.....	22
VII.	THE PROPOSED ATTORNEYS' FEES and COSTS ARE REASONABLE	24
VIII.	CONCLUSION	27

TABLE OF AUTHORITIES

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Federal Cases

<i>Bergman v. Thelen LLP</i> , 2016 U.S. Dist. LEXIS 170861, *21-22 (N.D. Cal. Dec. 9, 2016)	26
<i>Blum v. Stenson</i> , 465 U.S. 886, 900 n.16 (1984)	24
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	24, 26
<i>Central R. & Banking Co. v. Pettus</i> , 113 U.S. 116 (1885)	24
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D. Cal. Feb. 16, 2011) 2011 WL 672645	22
<i>Earley v. Sup. Ct.</i> , 79 Cal. App. 4th 1420 (2000)	23
<i>In re Activision Sec. Litig.</i> , 723 F. Supp. 1373 (N.D. Cal 1989)	25
<i>In re Pacific Enters, Sec. Litig.</i> 47 F.3d 373 (9th Cir. 1995)	25
<i>In re M.D.C. Holdings Sec. Litig.</i> , 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990)	26
<i>Mirkarimi v. Nev. Property I, LLC</i> , (S.D. Cal. Feb. 29, 2016) 2016 WL 795878	22
<i>Rawlings v. Prudential-Bache Properties, Inc.</i> (6th Cir. 1993) 9 F.3d 513, 516	27
<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003)	22
<i>Trustees v. Greenough</i> , 105 U.S. 527 (1882)	24
<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943 (9th Cir. 1976).....	20
<i>Van Vranken v. Atl. Richfield Co.</i> , 901 F. Supp. 294 (N.D. Cal. 1995)	22
<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d 1043, 1051 n.6 (9th Cir. 2002).....	27
<i>Waters v. Intern. Precious Metals Corp.</i> , 190 F.3d 1291 (11th Cir. 1999)	26
<i>Williams v. Centerplate, Inc.</i> , (S.D. Cal. Aug. 26, 2013) 2013 WL 4525428	23
<i>Williams v. MGM-Pathe Commun's. Co.</i> , 129 F.3d 1026 (9th Cir. 1997)	26

State Cases

<i>Chavez v. Netflix, Inc.</i> , (2008) 162 Cal.App.4th 43.....	26
<i>City & Cnty. of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	24
<i>Destefano v. Zynga, Inc.</i> , 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016)	27

<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	20
<i>Hopkins v. Stryker Sales Corp.</i> , 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)	27
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 130	16
<i>Lealao v. Beneficial Cal., Inc.</i> , (1989) 82 Cal. App. 4th 19.....	25, 26
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 407	16
<i>Potter v. Pacific Coast Lumber Co.</i> (1951) 37 Cal. 2d 592	20
<i>Quinn v. State</i> , 15 Cal.3d 162, 168 (1975)	25
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224	21

STATUTES

State Statutes

California Code of Civil Procedure §382	1
California Labor Code §2699 (1)(2)	2

RULES

Cal. Rules of Court, rule 3.769	1
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On behalf of himself and similarly situated individuals, Plaintiff Genaro Campos (“Plaintiff” or “Class Representative”) respectfully moves for final approval of a **\$250,000 (Two Hundred and Fifty-Thousand Dollars)** settlement of the class and PAGA claims asserted in this lawsuit against Defendants RL On-Time Delivery Service, Inc. (“RL On-Time”) and FedEx Ground Package System, Inc. (“FedEx Ground”) (collectively “Defendants”) or together with the Plaintiff, the “Parties”. The Parties to the Lawsuit vigorously disagree on the merits of the case. Class certification, liability and damages are all sharply disputed. Nevertheless, after litigation, investigation, interviews, exchange of extensive information, data, documents, and a mediation before a neutral, professional mediator skilled in California employment laws, the Parties reached an informed agreement to settle the class and PAGA claims pursuant to the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”).

Plaintiffs subsequently filed their unopposed Motion for Preliminary Approval of Class Action Settlement. A copy of the Settlement Agreement was submitted to the Court as Exhibit 1 to the Declaration of Matthew H. Fisher In Support of Motion for Preliminary Approval of Class Action Settlement (“Prelim. Fisher Decl.”), filed May 16, 2024.

On June 6, 2024, the Court held a hearing on the motion for Preliminary Approval. The Court preliminarily approved the settlement.

On June 12, 2024, the Court issued its Amended Order Re: Preliminary Approval Of Class And Representative Action Settlement And Conditional Certification (“Preliminary Approval Order”). The Court’s Preliminary Approval Order states, in part:

“The Court determines there is sufficient evidence to suggest that the Agreement (including the Class Representative Enhancement Award, Class Counsel’s fees and costs, the Settlement Administration Costs, and the allocation of payments to Settlement Class Members) falls within the range of possible approval that could ultimately be given final approval by this Court as fair, reasonable, and adequate....” (Preliminary Approval Order, 1:7-11)

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2 “The Settlement Agreement and the Notice of Class Action Settlement are
3 preliminarily approved. The Court further preliminarily approves the formulas
4 provided in the Settlement for calculating Individual Settlement Payments to the
Class Members using a work week calculation methodology.” (*Id.* at 3:20-23)

5 “The Settlement Class is provisionally certified for settlement purposes only as a
6 class of: “All current and former California based non-exempt employees who
7 physically performed work as pick up and delivery drivers for Defendant RL
8 On-Time Delivery Services, Inc. (‘RL On-Time’) in California from February 17,
9 2019 until the date of the Court's order granting preliminary approval of this
10 Settlement (the ‘Class Period’).” Excluded from the Settlement Class are putative
11 Class Members who submit a timely and valid Request for Exclusion and as
12 defined by the Settlement Agreement.” (*Id.* at 3:24-4:3)

13 In that Order the Court also set a date for the Final Approval hearing for September 20,
14 2024 at 8:20 a.m. in Dept. 40 (Hon. Mark S. Borrell). (Preliminary Approval Order, 6:26-7:5)

15 On July 12, 2024, in accordance with the terms of the Settlement Agreement and
16 Preliminary Approval Order, the Class Settlement Administrator CPT mailed the Court-approved
17 Notice of Class and PAGA Action Proposed Settlement (“Class Notice”) via first class mail to all
18 of the approximate 310 Class Members after receiving the class member data and running a
19 change of address search. Fisher Decl., **Exhibit 1 – Declaration of Veronica Olivares**
20 **Regarding Notice and Settlement Administration** (“Olivares Decl.”), ¶ 4-7).

21 The “Opt-Out”, dispute, and objection deadline will pass on August 26, 2024. (Olivares
22 Decl., ¶ 7).

23 As of August 14, 2024 the Settlement Administrator CPT reported:

- 24 • 6 (six) Class Notices remain undeliverable despite skip trace efforts;
- 25 • 0 (zero) Request for Exclusions (“Opt-Outs”);
- 26 • 0 (zero) Disputes; and
- 27 • 0 (zero) Objections.

28 (**Exhibit 1** – Olivares Decl., ¶ 9-12).

Therefore, there are currently a total of 310 participating Settlement Class Members out of
310 putative Class Members, representing a 100% participation rate. The average individual pre-

1 tax gross settlement payment, including PAGA payment, to each Settlement Class Member is
2 estimated at \$392.47. The highest individual settlement payment to a Settlement Class Member is
3 estimated at \$1,824.94. (Exhibit 1 – Olivares Decl., ¶14).

4 As of the date of the filing of this motion, and pursuant to the terms of the Settlement
5 Agreement and Preliminary Approval Order, the Class will receive an **Estimated Net Settlement**
6 **Fund of \$121,667.00**, (One Hundred Twenty-One Thousand and Six Hundred and Sixty-Seven
7 dollars) to pay Settlement Class Members. That amount was determined by subtracting Class
8 Counsel’s attorneys’ fees [-\$83,333], Class Counsel’s litigation costs [-\$20,000], the Class
9 Representative Enhancement Awards [-\$10,000], the PAGA Penalty Amount (-\$5,000, which
10 includes the LWDA payment [\$3,750] and the PAGA Group Employee payment [\$1,250]), and
11 the Settlement Administrator costs [-\$10,000] from the Gross Settlement Fund [\$250,000] to
12 determine settlement fund payment to Class Members. (Exhibit 1 – Olivares Decl., ¶16.)

13 This an excellent result for Class Members, especially given the potential challenges
14 entailed in successfully litigating this case. Courts routinely approve wage and hour settlements
15 of comparable cases resulting in far less recovery to individual class members. In Class Counsel’s
16 opinion, this is a good result in light of the disputed material factual and legal issues involved, the
17 intrinsic risks of further litigation without any assurance of a better outcome for Class Members,
18 and the substantial benefits available to Class Members under the Settlement. The Settlement
19 promotes judicial economy and eliminates the risk that Class Members could receive nothing
20 after protracted litigation.

21 **II. KEY TERMS OF THE SETTLEMENT**

22 **A. Definition of the Settlement Class**

23 Under the Settlement Agreement, the Settlement Class is defined as “All current and
24 former California based non-exempt employees who physically performed work as pick up and
25 delivery driver for Defendant RL On-Time Delivery Services, Inc. (‘RL On-Time’) in California
26 from February 17, 2019 until the date of the Court’s order granting preliminary approval of this
27 Settlement (the ‘Class Period’). (Settlement Agreement, Ex 1 to Prelim. Fisher Decl., 3:27-4:2)
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1 **B. \$250,000 Gross Settlement Fund**

2 The Settlement provides for RL On-Time to make a maximum payment of **\$250,000.00**
3 **(Two-hundred Fifty Thousand Dollars)** in settlement of all class claims in the case, including
4 attorney’s fees and costs, class administration costs, class representative enhancement award, and
5 PAGA payments. The first payment shall be made not later than thirty (30) business days after
6 the Effective Date and the second payment shall be made within three months of the first
7 payment. (Settlement Agreement, 3:11-22, 9:6-12.)

8 **C. Net Settlement Fund**

9 Class Members will share in an estimated Net Settlement Fund of approximately
10 **\$121,667.00** (\$250,000 maximum settlement amount minus - attorney fees [-\$83,333], estimated
11 attorney costs [-\$20,000], estimated class administration costs [-\$10,000], service awards [-
12 \$10,000] and PAGA payments [-\$5,000]). (Settlement Agreement, 12:21-13:14; Olivares Decl.,
13 ¶16).

14 **D. Individual Settlement Payments**

15 The allocation formula to the Class will be pro rata based on the number of compensable
16 workweeks worked within the Class Period. (Settlement Agreement, 14:21-15:3). With respect to
17 PAGA Payments, the Settlement Administrator will divide the PAGA Payment by the total
18 number of pay periods of aggrieved employees during the PAGA period to calculate the base
19 dollar amount per pay period, i.e. the “Pay Period PAGA Payment.” The Settlement
20 Administrator will calculate each aggrieved employees’ “Individual PAGA Payment” by
21 multiplying the “Pay Period PAGA Payment” by the number of pay periods that the aggrieved
22 employee was employed during the PAGA Period, i.e. a pro rata share. (*Id.* at 14:10-17.)

23 With regard to payments to the Settlement Class, the Settlement Administrator will divide
24 the Net Settlement Fund by the total number of workweeks of all Settlement Class Members
25 during the Class Period to calculate the base dollar amount per workweek, i.e. the “Settlement
26 Payment.” The Settlement Administrator will calculate each Settlement Class Member’s
27 “Individual Class Payment” by multiplying the Pay Period Class Payment by the number of pay
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1 periods the Settlement Class Member worked during the Class Period. (Settlement Agreement,
2 14:21-15:3).

3 Payments to Class members shall be apportioned 33.33% of each Individual Payment as
4 wages, 33.34% penalties, and 33.33% as interest. (Settlement Agreement, 13:17-20).

5 Any settlement checks not cashed after one hundred twenty (120) days from the date of
6 the class-wide distribution shall be void and the sums correlating to those checks not cashed and
7 any residual amounts shall be distributed in accordance with California Code of Civil Procedure
8 section 384 to the State Bar of California Justice Gap Fund. (Settlement Agreement, at 19:22-24).

9 **E. Released Claims**

10 Released Parties: The “Released Parties are defined as “RL On-Time and FedEx Ground,
11 and each of their past, present, and future divisions, affiliates, predecessors, successors,
12 shareholders, officers, directors, employees, attorneys, agents, trustees, representatives,
13 administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint
14 employers, co-employers, payroll service providers, staffing agencies, Professional Employer
15 Organizations, Administrative Service Organizations, insurers, related corporations, or privies,
16 both individually and collectively, any other individual or entity that could be jointly liable with
17 FedEx Ground or RL On-Time, whether previously or hereafter affiliated in any manner, and the
18 respective predecessors, successors, and assigns of all of the foregoing” (Settlement Agreement,
19 20:5-13.)

20 Released Claims: Class Members release Released Parties from “all known and unknown
21 claims, losses, damages, liquidated damages, penalties, including penalties under the Private
22 Attorneys General Act ("PAGA"), interest, liabilities, causes of action, civil complaints,
23 arbitration demands, or suits which reasonably arise from or reasonably relate to the facts pled
24 and allegations asserted in the Action or the notice letter to the LWDA, including, without
25 limiting the foregoing, all claims under the California Labor Code, including sections 200, 201,
26 202, 203, 204, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1197, 1197.1, 1199, 2802, 2698,
27 2699.3, and 2699.5, California Business and Professions Code section 17200, and the Industrial
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1 Welfare Commission Wage Orders.” (Settlement Agreement, 20:13-21)

2 The Settlement also provides both Defendants with a general release from Named
3 Plaintiff, including a Civil Code § 1542 waiver. (Settlement Agreement, 20:22-24:8.)

4 **F. Attorneys’ Fees and Incurred Expenses**

5 Class Counsel may move for reasonable attorney’s fees, not exceeding one-third
6 (\$83,333) of the maximum Gross Settlement Amount (\$250,000). (Settlement Agreement, 10:23-
7 24). Class Counsel may also seek reimbursement of reasonable expenses incurred by Class
8 Counsel in connection with the Lawsuit, not exceeding \$20,000. (*Id.* at 10:25.)

9 **G. Payments to LWDA and Settlement Administrator**

10 Five Thousand Dollars (\$5,000) of the Gross Settlement Fund is allocated to the
11 resolution of potential PAGA claims. (Settlement Agreement, 5:1-2). Pursuant to PAGA, 75% of
12 this amount (\$3,750) is to be paid to the California Labor and Workforce Development Agency
13 and 25% to the Class (\$1,250). (*Id.* at 5:2-5). Class members will receive their share of the PAGA
14 payment regardless of whether they opt out of the settlement. (Settlement Agreement, 14:18-20)
15 Class Counsel may further apply to the Court for payment from the Gross Settlement Fund to
16 compensate the Settlement Administrator – CPT Group, Inc. for fees and costs associated with
17 the administration of the settlement not to exceed \$10,000 (Settlement Agreement, 5:18-20, 13:1-
18 3.)

19 **H. Class Representative Enhancement/Service Awards**

20 Class Counsel may seek an Enhancement Award of \$10,000.00 for the Named Plaintiff.
21 (Settlement Agreement, 11:8-12).

22 **I. Notice Period and Response/Opt-Out Deadline**

23 Class Members have **45 calendar days** following Class Notice (mailed on July 12, 2024),
24 on and until August 26, 2024, to mail in a written request to be excluded (“Opt-Out”), dispute, or
25 object to the proposed settlement. (Settlement Agreement, 4:24-27.)
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1 **III. FACTUAL BACKGROUND**

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3 **A. Plaintiff's Allegations**

4 Plaintiff and Class Members allege they are current and former employees of Defendants,
5 working as pick-up and delivery drivers ("Delivery Drivers" or "Drivers") delivering packages
6 during the Class Period. Plaintiff alleges as follows: While Defendants classified Delivery
7 Drivers as hourly workers, in actuality they paid Delivery Drivers through an informal per diem
8 system that did not compensate them for all hours worked. While Defendants issued Plaintiff's
9 and Class Members' paystubs purporting to reflect hours worked, they in fact paid Plaintiff's and
10 Class Members' a set per diem pay rate, roughly in the range of \$180-200 per day. Defendants
11 did not pay Delivery Drivers for hours worked in excess of this amount, no matter how many
12 hours they actually worked per day or week including overtime hours. Further, instead of
13 requiring Delivery Drivers to keep accurate, daily logs of their actual working time, Defendants
14 instructed Delivery Drivers to falsify several logs to falsely indicate they took duty-free meal
15 breaks as required by California Law when in fact they had not taken duty-free meal breaks.
16 Delivery Drivers were in fact not given meal or rest breaks and instead were pressured and/or
17 prevented from taking meal and rest breaks in order to finish their routes as quickly as possible.
18 Defendants also routinely did not pay Class Members for time spent loading their trucks prior to
19 departure on their routes.

20 **B. Defendants' Response**

21 Defendants deny Plaintiff's allegations. Specifically, FedEx Ground denies that it
22 employed Plaintiff or the putative class, or classified them in any way for employment purposes.
23 FedEx Ground also denies that it had any role in setting the terms of Plaintiff's and the putative
24 classes' employment with RL-On Time, including compensation terms, work schedules, or any
25 other wage and hour practices. FedEx Ground also denies that it issued any payments or paystubs
26 to Plaintiff and the putative class, instructed them in any way to falsify time logs, or
27 communicated with Plaintiff and the putative class about breaks or the time spent delivering
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1 packages or any other condition of their employment with RL On-Time. RL On-Time denies that
2 putative class members were improperly paid, or that it violated wage and hour laws in its
3 practices with respect to Plaintiff and the putative class.

4 **IV. PROCEDURAL HISTORY**

5
6 **February 17, 2023** -- Plaintiff's Complaint filed in Ventura Superior Court. The
7 Complaint alleges 9 causes of action on behalf of Plaintiff and putative class against Defendants
8 RL On-Time, FedEx Ground, and FedEx Corporation, including:

- 9 (1) Failure to Pay Overtime Wages,
- 10 (2) Failure to Pay Minimum/Regular Wages,
- 11 (3) Failure to Provide Meal Breaks,
- 12 (4) Failure to Provide Rest Breaks,
- 13 (5) Failure to Furnish Timely/ Accurate Wage Statements,
- 14 (6) Failure to Pay All Wages Due at Discharge in Timely Manner
- 15 (7) Failure to Reimburse Business Expenses
- 16 (8) Failure to Pay All Hours Worked
- 17 (9) Unlawful Business Practices.

18 **The Putative Class Definition:** Plaintiff originally defined the Class as:

19 All current and former California based non-exempt employees who
20 worked for RL On-Time and FedEx Ground as Delivery Drivers in
21 California during the Class Period (February 17, 2019, until the entry of
22 judgment)

23 (Complaint, para 24.)

24 Plaintiff is a member of the proposed class and contends he is representative of other Delivery
25 Drivers and is acting on behalf of their interests.

26 Plaintiff also served written notice ("PAGA" notice) to Defendants of ongoing wage
27 violations with respect to Delivery Drivers.

28 **April 25, 2023** – Plaintiff filed a First Amended Complaint ("FAC") adding a tenth cause
of action for Violation of PAGA.

May 25, 2023 – Defendant FedEx Ground Package System, Inc. filed an answer to the
FAC.

May 25, 2023 – Defendant FedEx Ground filed a Notice of Removal removing the case to
federal court under the Class Action Fairness Act ("CAFA"), styled as *Campos v. RL On-Time*

1 *Delivery Service, Central District Court Case No. 2:23-cv-04082-FLA-SK.*

2 **May 26, 2023** – Defendant RL On-Time, Inc. filed an answer to the FAC.

3 **June 1, 2023** – Defendant FedEx Corporation filed a 12(b)(6) Motion to Dismiss For
4 Lack of Personal Jurisdiction, contending it lacked minimum contacts with the operations of the
5 separate entity that is FedEx Ground Package System, Inc. in California during the relevant time
6 period.

7 **June 21, 2023** – Parties discussed potential mediation of the matter.

8 **July 6, 2023** – Plaintiff’s counsel sent Defendants an informal Data Request for mediation
9 information (Employee Start/Stop Dates, hourly pay, hours worked, etc.).

10 **July 19, 2023** – The Parties exchanged Initial Disclosures in District Court.

11 **July 19, 2023** – The District Court (Hon. Fernando L. Aenlle-Rocha) set an Order to
12 Show Cause as to why the case should not be remanded to state court due to FedEx Ground’s
13 failure to establish CAFA’s \$5,000,000 amount in controversy requirement.

14 **August 2, 2023** – The Parties agreed to mediation on October 30, 2023 with Jill Sperber,
15 Esq.

16 **August 8, 2023** – Defendant FedEx Corporation was dismissed from the Action without
17 prejudice by joint stipulation of the Parties executed by the Court, each side to bear its own
18 attorneys’ fees and costs.

19 **September 1, 2023** – Plaintiff propounded an initial set of written discovery to
20 Defendants (interrogatories, requests for production) seeking class wide discovery and *Belaire*
21 Notice.

22 **September 5, 2023** – FedEx Ground propounded an initial set of written discovery to
23 Plaintiff.

24 **October 6, 2023** – FedEx Ground produced information to Plaintiff that consisted of
25 FedEx Ground’s Independent Server Provider agreement with RL On-Time and Department of
26 Transportation Hours of Service information for Plaintiff.

27 **October 13, 2023** – RL On-Time produced mediation data/information including
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1 Plaintiff's personnel file, timesheets, paystubs, and an excel spreadsheet showing class members
2 wage and hour data (dates of hire/termination, overtime hours worked, etc.).

3 **October 13, 2023** – After reviewing the Parties' briefing, the District Court issued an
4 order remanding the matter to Ventura Superior Court. It found that Plaintiff lodged a factual
5 attack on several of the assumptions in the notice of removal regarding class members' overtime
6 hours worked and meal/rest breaks taken, and that FedEx Ground failed to meet its burden to
7 show by the preponderance of the evidence that CAFA's \$5,000,000 case in controversy
8 requirement was met.

9 **October 25, 2023** – Mediation continued to December, 2023.

10 **December 4, 2023** – A full day mediation was held with mediator Jill Sperber of Judicate
11 West, via Zoom. The mediation ended without a settlement, but the Parties indicated they would
12 consider a mediator's proposal. On December 5, 2023, Ms. Sperber communicated a mediator's
13 proposal. After a few days, both sides accepted the proposal. The Parties then negotiated and
14 drafted a Memorandum of Understanding (MOU) to memorialize the terms of the proposed class
15 settlement. The MOU includes a release of claims against FedEx Ground, however RL On-Time
16 is the sole funder of the class settlement.

17 **January 24, 2024** -- The Parties executed the MOU. Subsequently, the Parties negotiated
18 and drafted a "long-form" Joint Stipulation of Class Action and PAGA Settlement and Release
19 ("Settlement Agreement")

20 **April 12, 2024** -- After additional rounds of drafting/editing, the Parties agreed upon the
21 terms reflected in the proposed Settlement Agreement now before the Court including the forms
22 and procedure for providing notice of the proposed settlement to the Class Members.

23 **June 6, 2024:** The Court held a hearing on Plaintiff's unopposed motion for Preliminary
24 Approval. After hearing, the Court granted the motion and preliminarily approved the settlement.

25 **June 12, 2024:** Post-hearing, the Court issued its Amended Order Re: Preliminary
26 Approval Of Class And Representative Action Settlement And Conditional Certification
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1 (“Preliminary Approval Order”). In the Preliminary Approval Order, the Court set the hearing for
2 Final Approval for September 20, 2024.

3 **July 12, 2024 (Notice of Class Action and PAGA Settlement Mailed):** Class Notices to
4 Class Members were mailed by the Settlement Administrator CPT.

5 **August 26, 2024 (Class Action Notice Period/Response Deadline Ended):** The Class
6 Notice/Response Deadline will end.

7 **September 20, 2024:** The hearing on Final Approval of the Class and Representative
8 Action Settlement is to be held.

9
10 **V. THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL**

11 Pursuant to the Settlement, the Settlement Administrator CPT has engaged in a
12 comprehensive notification process which started on July 12, 2024 with mailing of notice to 310
13 Class Members via First Class mail. The notice period in which to submit a dispute, objection, or
14 “opt out” of the settlement will conclude on August 26, 2024. The terms of the Settlement have
15 been well received by the Class Member as to date 0 (zero) Class Members have submitted an
16 “opt-out” (100% participation rate), 0 (zero) Class Members have objected, and 0 (zero) Class
17 Members have submitted a dispute. (**Exhibit 1** – Olivares Decl., ¶¶ 9-12)

18 “The trial court’s discretion is broad” regarding approval of a class action settlement, and
19 “is to be exercised though the application of several well-recognized factors.” *Munoz v. BCI*
20 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407. These factors include,
21 but are not limited to, the strength of Plaintiff’s case; the risk, expense, complexity and likely
22 duration of further litigation; the risk of maintaining class action status through trial; the amount
23 offered in settlement; the extent of discovery completed and the stage of the proceedings; the
24 experience and views of counsel; and the reaction of the class members to the proposed
25 settlement. *Id.* (omitting quotations and citations). “The most important factor is the strength of
26 the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.* at
27 407-408 (quoting *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130). An
28

1 analysis of the pertinent factors to the Parties' Settlement demonstrates that final approval is
2 appropriate.

3 **A. The Parties Disputed the Merits of Plaintiffs' Case and Likelihood of Class**
4 **Certification**

5 The Settlement is the result of a year of litigation, and the exchange of significant data and
6 information and vigorously investigated and debated claims. Plaintiff's Counsel began their
7 investigation into the claims well before the case was filed. Plaintiff's Counsel interviewed and
8 obtained informal discovery from the Plaintiff. Likewise, Defendants' counsel conducted their
9 own investigation of Plaintiff's allegations after the litigation was initiated. These investigations
10 and discovery were crucial to the Parties' dispute over both the merits of the case, as well as with
11 respect to the appropriate scope of the Class.

12 After the Action was initiated, Plaintiff's counsel and Defendants' counsel engaged in
13 litigation, written discovery, jurisdictional disputes including removal to federal Court and
14 remand to this action, motions to dismiss, discussions, and a mediation before reaching this
15 Settlement. Early on they began having regular discussions regarding the claims, discovery,
16 depositions, production of data, the scope of the Class, and the possibility of mediation and
17 settlement. The Parties each feel strongly regarding their respective positions as to the claims
18 asserted, both at the certification stage and on the merits. In this case, Plaintiff alleges that class
19 certification is appropriate because Defendants' employees were subjected to consistent wage and
20 hour policies regarding the lack of payment of overtime wages, duty-free meal/rest periods, and
21 wage statements. Plaintiff alleges Defendants subjected Class Members to unpaid "off the clock"
22 work and Class Members worked overtime hours but were not paid for said overtime and/or at the
23 appropriate overtime rates, were not permitted duty-free meal/rest periods, and not provided
24 timely/accurate wage statements throughout the Class Period. Defendants assert that class
25 certification would not be appropriate because Plaintiffs' proposed Class Members were paid all
26 overtime hours, permitted duty-free meal/rest periods, and provided timely/accurate wage
27 statements. Defendants further contend that Defendant FedEx Ground did not employ Plaintiff.
28

1 Throughout the litigation, the Parties also have vigorously disputed the merits of
2 Plaintiff's claims. Plaintiff alleges that all Class Members throughout the Class Period were
3 subject to the same wage policy and practices promulgated by Defendants. Plaintiff alleges Class
4 Members worked overtime hours that were not paid for at all and/or at the appropriate overtime
5 rates, etc. Defendants have generally denied Plaintiff's allegations, and further assert that they
6 have no liability for any of Plaintiff's or the Class Members' alleged claims on the basis that
7 Class Members were paid for all overtime hours and permitted duty-free meal/rest periods.
8 Defendants further contend that, if this matter were to be further litigated, they would have strong
9 defenses on the merits. As the Parties clearly disagree regarding the strength of Plaintiff's claims
10 and likelihood of class certification, the Settlement represents a fair compromise assuring
11 significant recovery to the Class Members that they would not otherwise be guaranteed.

12 **B. The Risk, Expense, And Complexity Of Continuing To Litigate The Action**

13 As demonstrated above, the Parties are sharply divided on the factual and legal issues
14 pertaining to the underlying claims, as well as whether class certification can be obtained in this
15 case. Defendants are represented by well-staffed counsel who are experienced in wage and hour
16 law and class actions, as are Plaintiff's counsel. The Parties contend that continued litigation
17 would be protracted and expensive, with no assurance of a better outcome for the Class.

18 Significantly, while significant informal and formal discovery has occurred to ensure the
19 Settlement is fair and reasonable to the Class, should the Settlement not be finally approved, the
20 Parties will need to start from scratch in terms of engaging in formal discovery on the
21 certification issues, as well as the merits in this matter. The Settlement reached by the Parties
22 through extensive arms-length negotiations eliminates the risk that the Class Members will
23 receive nothing, eliminates the need for further protracted and expensive litigation that financially
24 jeopardizes any recovery, and eliminates the risk of lengthy and uncertain appeals. The
25 elimination of those many uncertainties is reflected in the Settlement which provides prompt and
26 substantial relief to the Class Members. These factors weigh heavily in favor of approving the
27 Settlement.
28

1 C. **The Settlement Amount Offered To Class Members Is Fair And**
2 **Reasonable**

3 The Settlement provides for Defendant RL On-Time to make a payment of **\$250,000** in
4 settlement of all Class claims in the case, including attorney's fees and costs, settlement
5 administration fees, PAGA penalties, and a class representative enhancement award. Class
6 Members will share in an **Estimated Net Settlement Fund of \$121,667.00** (One Hundred
7 Twenty-One Thousand and Six Hundred and Sixty-Seven dollars) to pay Class Members. That
8 amount was determined by subtracting Class Counsel's attorneys' fees [-\$83,333], Class
9 Counsel's litigation costs [-\$20,000], the Class Representative Enhancement Award [-\$10,000],
10 the PAGA Penalty Amount (-\$5,000, which includes the LWDA payment [\$3,750] and the
11 PAGA Group Employee payment [\$1,250]), and the Settlement Administrator costs [-\$10,000]
12 from the Gross Settlement Fund [\$250,000] to determine settlement fund payment to Class
13 Members. (**Exhibit 1** – Olivares Decl., ¶16.)

14 This is an excellent recovery for the class, which at the time of filing includes 310 (out of
15 310) Settlement Class Members. The average Class Member will receive a pre-tax award of
16 approximately \$392.47 (**Exhibit 1** – Olivares Decl., ¶14). The amount of the Settlement is
17 reasonable given the difficulty of the claims, the degree of risk and uncertainty involved in further
18 litigation, the amount of time that would pass before Plaintiff and the Class Members would see
19 the fruits of any class verdict in their favor, and the lack of ability of Defendant RL On-Time to
20 pay.

21 The allocation formula to the Class will be pro rata based on number of compensable
22 workweeks worked within the Class Period. (Settlement Agreement, 14:21-15:3). With respect to
23 PAGA Payments, the Settlement Administrator will divide the PAGA Payment by the total
24 number of pay periods of aggrieved employees during the PAGA period to calculate the base
25 dollar amount per pay period, i.e. the "Pay Period PAGA Payment." The Settlement
26 Administrator will calculate each aggrieved employees' "Individual PAGA Payment" by
27 multiplying the "Pay Period PAGA Payment" by the number of pay periods that the aggrieved
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1 employee was employed during the PAGA Period, i.e. a pro rata share. (*Id.* at 14:10-17.)

2 With regard to payments to the Settlement Class, the Settlement Administrator will divide
3 the Net Settlement Fund by the total number of workweeks of all Settlement Class Members
4 during the Class Period to calculate the base dollar amount per workweek, i.e. the “Settlement
5 Payment.” The Settlement Administrator will calculate each Settlement Class Member’s
6 “Individual Class Payment” by multiplying the Pay Period Class Payment by the number of pay
7 periods the Settlement Class Member worked during the Class Period. (Settlement Agreement,
8 Ex. 1 to Prelim. Fisher Decl., 14:21-15:3).

9 Payments to Class members shall be apportioned 33.33% of each Individual Payment as
10 wages, 33.34% penalties, and 33.33% as interest. (Settlement Agreement, 13:17-20).

11 Any settlement checks not cashed after one hundred twenty (120) days from the date of
12 the class-wide distribution shall be void and the sums correlating to those checks not cashed and
13 any residual amounts shall be distributed in accordance with California Code of Civil Procedure
14 section 384 to the State Bar of California Justice Gap Fund. (Settlement Agreement, at 19:22-24).

15 **D. The Settlement Agreement Is Fair And Reasonable**

16 The law favors settlements, especially of class actions. *See Potter v. Pacific Coast Lumber*
17 *Co.* (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
18 950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only be
19 settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
20 1801. The trial court is required to determine whether the “settlement is fair, adequate and
21 reasonable,” and has “broad discretion” in making this assessment. *Id.*

22 Following notice to the Class, the Court can now make a final determination regarding the
23 fairness of the Settlement. In making this evaluation, courts consider and balance a number of
24 factors, as described above, including: [T]he strength of plaintiffs’ case, the risk, expense,
25 complexity and likely duration of further litigation, the risk of maintaining class action status
26 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
27 the proceedings, the experience and views of counsel, the presence of a governmental participant,
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1 and the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer,*
2 *Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th
3 at 1801).

4 A presumption of fairness exists when: (1) the parties reached a settlement through arm’s-
5 length bargaining; (2) the parties conducted sufficient investigation and discovery to allow
6 counsel and the Court to act intelligently; (3) counsel are experienced in similar litigation; and,
7 (4) the percentage of objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802. In this case, both
8 Plaintiff and Defendants recognized that it was in their mutual interest to explore resolution.
9 Defendants, primarily RL On-Time, agreed, through both formal and informal discovery
10 processes, to produce a significant amount of data to enable Plaintiff to fully and fairly evaluate
11 both liability and damages. Indeed, prior to and during the mediation, RL On-Time produced
12 voluminous data, which Plaintiff analyzed through dynamic spreadsheet calculations via
13 Plaintiff’s experts on multiple occasions. Those calculations were provided in Plaintiff’s motion
14 for preliminary approval and declarations in support thereof.

15 The Parties therefore had more than enough information to allow for a sufficient analysis
16 of the likelihood of certification (and decertification), liability, and damages. Prior to attending
17 mediation, the Parties were aware of the strengths and weaknesses of their respective positions,
18 and they addressed their respective positions at the lengthy mediation session and at further
19 settlement discussions. It was only after the exchange of information and multiple rounds of
20 arm’s-length demands and offers facilitated by the mediator, that the parties finally reached their
21 proposed Settlement. The amount is, of course, a compromise figure, and considers risks related
22 to liability, possible damage scenarios, and all defenses asserted by Defendants.

23 Should a Class Member not desire to participate in the Settlement, for whatever reason,
24 the Parties provided for an “opt-out” procedure. This procedure allowed any Class Members who
25 believed they had claims worth more than what the Settlement provides with an opportunity to
26 pursue their individual claims. Moreover, in the event that a Class Member disagreed with the
27 Settlement for any reason whatsoever, the Parties provided for an objection procedure. However,
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1 to date 0 (zero) Class Members have “opted-out”, 0 (zero) Class Members have disputed their
2 Workweeks/individual payment amounts, and 0 (zero) Class Members have objected to final
3 settlement approval. At all times during this litigation, the Parties were represented by competent
4 and experienced counsel with decades of class action experience, who vigorously prosecuted their
5 respective positions while seeking a cost-effective resolution to this Action. Counsel is confident
6 that the Settlement is in the best interest of the Plaintiffs, and the Class, as it is fair, reasonable,
7 and provides substantial relief which the Class would not be guaranteed, for numerous reasons,
8 should litigation proceed.

9 **VI. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
10 **REASONABLE**

11 Pursuant to the terms of the Settlement, the Class Representative now seeks an
12 Enhancement Payment of **\$10,000** (Settlement Agreement, Ex. 1 to Prelim. Fisher Decl., 11:8-
13 12)). Courts have routinely granted such enhancements. *Staton v. Boeing Co.*, 327 F.3d 938, 977
14 (9th Cir. 2003) (“[N]amed Plaintiffs . . . are eligible for reasonable incentive payments.”).

15 When considering whether to make an incentive award, courts consider the following
16 factors: (1) the risk to the class representative in commencing suit, both financial and otherwise;
17 (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount
18 of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
19 personal benefit, or lack thereof, received by the class representative as a result of the litigation.
20 *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (quotations and
21 citation omitted).

22 The typical enhancement award ranges from approximately \$5,000.00 to \$40,000.00,
23 although some awards are higher, and commonly more than one class representative receives
24 awards in the above range. *Mirkarimi v. Nev. Property I, LLC*, No. 12cv2160 BTM (DHB), 2016
25 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (finding a \$30,000.00 enhancement award is proper);
26 *Chu v. Wells Fargo Inv., LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *5
27 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000.00 to two named plaintiffs, and \$4,000.00 to three
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1 named plaintiffs, and indicating that enhancement awards have ranged from \$5,000.00 to
2 \$50,000.00); *see also Williams v. Centerplate, Inc.*, No 11-CV-2159 H-KSC, 12-cv-0008-H-KSC,
3 2013 WL 4525428, at * (S.D. Cal. Aug. 26, 2013) (finding \$5,000.00 incentive awards to three
4 named plaintiffs, representing 2.3% of the common fund, reasonable).

5 Here, the requested Class Representative Enhancement Payment of \$10,000 is reasonable
6 and justified based on the significant risk, difficulties, time and effort the Class Representative
7 incurred in bringing this case on behalf of the Class, as well as the substantial benefits the
8 resulting Settlement provides the Class. The requested award is at the bottom of the reasonable
9 range, and is justified because of the Class Representative's involvement. The Class
10 Representative has made significant efforts to provide information, witnesses, and evidence to
11 Plaintiffs' Counsel to achieve the result described herein. The proposed Class Representative
12 Enhancement Payments of \$10,000 represents only 4% of the \$250,000 maximum settlement
13 amount and will not significantly reduce the awards of the Class Members.

14 Plaintiff was the driving force behind this case. He initiated the claim, arranged for
15 Plaintiffs' Counsel to obtain evidence through production of his own employment files and
16 records, reviewed the pleadings/briefs, had numerous calls and meetings with counsel, attended a
17 full day mediation, and took personal and financial risk in coming forward (*see, e.g., Earley v.*
18 *Sup. Ct.*, 79 Cal. App. 4th 1420, 1433 (2000) (representative risk an adverse award of costs).
19 Plaintiff knows little about the legal system but provided and obtained additional information in
20 support of his legal claims. Plaintiff expressed fear that by participating in a class action lawsuit
21 he might risk his current job and/or future opportunities. Plaintiff however stepped up and worked
22 diligently in support of the case. Plaintiff had numerous meetings and telephone conversations
23 with Class Counsel to aid in the initial investigation, factual development, mediation, and
24 resolution of this case. In sum, the Settlement could never have been achieved without his service
25 to the greater good on behalf of the Class that has resulted in a recovery for these workers. (See
26 Fisher Decl., **Exhibit 2 – Declaration of Genaro Campos ISO Motion for Final Approval of**
27 **Class Settlement**). The Class Representative also risked potential judgment against himself if the
28

1 matter was unsuccessful as a losing party is liable for the prevailing party's costs. *Earley v. Sup.*
2 *Ct.* (2000) 79 Cal.App.4th 1420, 1431-33. Additionally, Plaintiff has protected the interests of
3 Class Members during the pending of this matter, and will continue to do so.

4 **VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

5 Under the terms of the Settlement Agreement, Class Counsel now moves for a Class
6 Counsel Award of reasonable **attorney's fees in the amount of \$83,333** (33.33% of the Gross
7 Settlement Fund of \$250,000) approved per the Court's Preliminary Approval Order and
8 Settlement Agreement. (Fisher Decl., ¶ 8; Settlement Agreement, 10:23-24). Class Counsel also
9 seeks reimbursement of reasonable **costs incurred in the amount of \$20,000**. (Fisher Decl., ¶14;
10 Settlement Agreement, 10:25). These amounts fall well within the historical range of attorneys'
11 fee awards, especially as Class Counsel's fees constitute one-third (1/3) of the total settlement
12 value. The requested fee represents fair compensation for undertaking complex, risky, expensive,
13 and time-consuming litigation on a contingent fee basis, especially in light of the substantial
14 benefits achieved by Class Counsel for the Class Members. Plaintiff's Counsel diligently litigated
15 and investigated this case. Class Counsel has attached a detailed declaration justifying the award
16 of fees and costs. (see Fisher Decl., ¶¶ 8-14).

17 It has long been recognized that "a litigant or a lawyer who recovers a common fund for
18 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
19 from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of
20 this doctrine is to avoid unjust enrichment and to spread litigation costs proportionately among all
21 the beneficiaries. *Id.* This common fund doctrine is firmly rooted in American case law. *See, e.g.,*
22 *Trustees v. Greenough*, 105 U.S. 527 (1882); *Central R. & Banking Co. v. Pettus*, 113 U.S. 116
23 (1885); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

24 California courts have recognized that an appropriate method for awarding attorney's fees
25 in class action cases like this is to award a percentage of the "common fund" created as a result of
26 the settlement. *City & Cnty. of San Francisco v. Sweet* ("Sweet"), 12 Cal.4th 105, 110-11 (1995);
27 *Quinn v. State*, 15 Cal.3d 162, 168 (1975). The basis of the common fund is fairness to the
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1 successful litigant who might otherwise receive no benefit because his recovery might be
2 consumed by the expenses; correlative prevention of an unfair advantage to others who are
3 entitled to share in the fund and who should bear their share of the burden of its recovery; and
4 encouragement of the attorney, who will be more willing to undertake and diligently prosecute
5 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
6 and directly compensated should his efforts be successful. *Sweet*, 12 Cal.4th 105, 111 (1995). In
7 *Quinn v. State*, the California Supreme Court expressly recognized that “one who expends
8 attorneys’ fees in winning a suit which creates a fund from which others derive benefits may
9 require those passive beneficiaries to bear a fair share of the litigation costs.” 15 Cal.3d 162, 167
10 (1975). Similarly, in *Sweet*, the Court recognized that the common fund doctrine has been applied
11 “consistently in California when an action brought by one party creates a fund in which other
12 persons are entitled to share.” 12 Cal.4th at 110.

13 Several courts have expressed frustration with the alternative “lodestar” approach for
14 deciding fee awards, which usually involves wading through voluminous and often
15 indecipherable time records. *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 31 n.5 (citing *In*
16 *re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989)). The percentage approach is
17 preferable to the lodestar because it: (1) aligns the interests of class counsel and absent class
18 members; (2) encourages efficient resolution of the litigation by providing an incentive for early,
19 yet reasonable, settlement; and (3) reduces the demands on judicial resources. *In re Activision*,
20 723 F. Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
21 fund approach to determine the award of attorney’s fees. *Lealao*, 82 Cal. App. 4th at 30-31; see
22 e.g., *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (approving attorney’s
23 fee of 33%).

24 Class Counsel’s request for fees of one-third of the Gross Settlement Fund is well within
25 the range of reasonableness. Historically, courts have awarded percentage fees between 20% and
26 50%, depending on the circumstances of the case. See *In re Activision*, 723 F.Supp. at 1378.
27 Awarding 33% of a common fund is neither unreasonable nor uncommon. California courts have
28

1 frequently awarded attorneys' fees in common fund cases equal to one-third of the gross
2 recovery. *See, e.g., Lafitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 (approving one-
3 third percent attorneys' fee); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (1st Dist. 2008)
4 (noting that fee of one-third gross settlement value is customary); *see also, e.g., In re M.D.C.*
5 *Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("In private contingent
6 litigation, fee contracts have traditionally ranged between 30% and 40% of the total recovery.").

7 Further, California courts recognize that a percentage fee "may be calculated on the basis
8 of the total fund made available rather than the actual payment made to the class." *Lealao*, 82
9 Cal.App.4th at 51 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Waters v. Intern.*
10 *Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Commun's. Co.*,
11 129 F.3d 1026 (9th Cir. 1997)); *see also, e.g., Bergman v. Thelen LLP*, 2016 U.S. Dist. LEXIS
12 170861, *21-22 (N.D. Cal. Dec. 9, 2016) ("...Ninth Circuit precedent requires courts to award
13 class counsel fees based on the total benefits being made available to class members rather than
14 the actual amount that is ultimately claimed.") (citing *Williams*).

15 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation
16 associated with this class action on a pure contingency basis. The factual and legal issues posed in
17 this case are highly disputed, and there also were risks whether a class would be certified, leaving
18 a large number of putative class members unlikely to receive any recovery. While California
19 courts recognize that the percentage method is superior to the lodestar method, they also
20 recognize that the lodestar provides a useful "cross-check" in determining reasonableness of
21 percentage fees sought. Here, the requested fee award of \$83,333 represents a negative multiplier
22 of the lodestar to date (\$101,450.00) which is well within the range warranted under California
23 law. (see Fisher Decl., ¶ 12-13; **Exhibit 3 - NALFA 2020 Litigation Hourly Rate Range**
24 **Growth; Exhibit 4 - Laffey Matrix; Exhibit 5 - National Law Journal Billing Survey 2017;**
25 See also **Exhibit 7**, Declaration of Matthew S. Da Vega ISO Final Approval, ¶¶12-13; **Exhibit 8**,
26 Declaration of Ted Mechtenberg ISO Final Approval ¶¶ 12-13). "Multipliers of 1 to 4 are
27 commonly found to be appropriate in complex class action cases." *Destefano v. Zynga, Inc.*,
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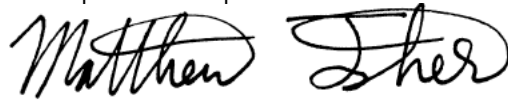
1 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013
2 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United
3 States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
4 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that
5 an award is supported by the lodestar cross-check is fair and reasonable and is justified under
6 California law. “[T]he lodestar method better accounts for the amount of work done, while the
7 percentage of the fund method more accurately reflects the results achieved.” *Rawlings v.*
8 *Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516. The Court should approve the
9 requested attorneys’ fees and costs, which are justified by the results achieved, the complexity of
10 the issues, the difficulty of the case, and the risk undertaken by Class Counsel. The requested
11 attorneys’ fees and costs will not be opposed by Defendants and are well within established
12 guidelines.

13 **VIII. CONCLUSION**

14 For the reasons set forth above and in the accompanying papers, Plaintiff respectfully
15 requests that the Court grant Plaintiff’s unopposed Motion for Final Approval of the Class
16 Settlement and sign the proposed Order and Judgment thereon. The Settlement is fair, adequate,
17 and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it
18 was achieved as the result of informed, extensive, and arm’s length negotiations conducted by
19 counsel for respective Parties who are experienced in wage and hour class action litigation.
20

21 **DATED:** August 20, 2024

DA VEGA | FISHER | MECHTENBERG LLP

22 
23 By: _____
24 Matthew H. Fisher
25 Attorneys for Plaintiff and Proposed Class
26
27
28