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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CHRISTIAN SANCHEZ, ATU AKINLABI WATSON, and TYRON WESLEY MCCARTHER, individuals, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SPOKE LOGISTICS, LLC, a Wyoming Limited Liability Company, and Does 1-25, Inclusive,

Defendant.

Case No. 23-CV-035138
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Victoria Kolakowski
Department 16

CLASS AND REPRESENTATIVE ACTION

POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Date: April 14, 2026
Time: 2:30 p.m.
Dept.: 16
Reservation: 408531732666

Complaint filed: June 6, 2023
Trial Date: Not Set

SPOKE LOGISTICS, LLC, a California Corporation, Cross-Complainant, v. HE IS THE WAY TRANSPORT SERVICES, INC., Cross-Defendant.	Complaint filed: September 11, 2023 Trial Date: Not Set

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I. INTRODUCTION

Plaintiffs Christian Sanchez, Atu Akinlabi Watson, and Tyron Wesley McCarther ("Plaintiffs") seek preliminary approval,[1] under Rule 3.769(c) of the California Rules of Court, of a $1,050,000 non-reversionary Settlement on behalf of approximately 300 drivers who worked for Defendant Spoke Logistics, LLC ("Spoke" or "Defendant") in California between September 18, 2021 and December 17, 2025 (the "Class Period"), and approximately 255 Aggrieved Employees who worked for Defendant in California between March 30, 2022, to December 17, 2025 (the "PAGA Period"). Decl. of Maggie Realin ("Realin Decl."), ¶2.

This is a cash settlement and all Class Members who do not opt out will receive a payment, without a requirement to submit a claim form. In summary, in their respective actions, brought jointly before this Court for purposes of this settlement, Plaintiffs allege they were misclassified as independent contractors and as a result were denied minimum wage and overtime pay, meal and rest breaks, reimbursement for business expenses, sick leave, accurate wage statements, and timely-paid wages. Although Plaintiffs initially brought their respective claims only as representative actions under the Private Attorneys General Act ("PAGA"), the Parties ultimately reached a global settlement on a class-wide and PAGA basis.

This case resolved following mediation before experienced wage and hour neutral, Jeffrey Fuchsman, Esq. Plaintiffs argue that Defendant's maximum potential liability for all of their claims, excluding PAGA penalties,[2] is **$6,731,973.04**. This assumes that class members would receive compensation for 2.5 hours of overtime per week, meal and rest break premiums twice a week, and weekly business expense reimbursements of $450.

Thus, the $1,050,000 Gross Settlement Amount represents **15.2%** Spoke's maximum potential liability for Plaintiffs' claims, including derivative waiting time, wage statement, and willful misclassification penalties. This is an excellent result in light of the risks of continued litigation, and within the range of typical class action settlement recoveries.

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[1] This memorandum exceeds the 15-page limit set forth in CRC 3.1113, but Plaintiffs have stipulated to an extension of the page limit to allow Plaintiffs to sufficiently present this Settlement including class certification factors for the Court's approval.

[2] The settlement of Plaintiffs' PAGA penalties is discussed in Section IV(A)(3), below.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2023, Plaintiff Sanchez filed a PAGA-only complaint in Alameda Superior Court, seeking civil penalties on behalf of Defendant's misclassified drivers. Sanchez began working for Spoke Logistics in July 2022, delivering durable medical equipment on behalf of Apria Healthcare. Although classified as an independent contractor and issued a 1099 form, he alleges that the nature of his work and the level of control exercised by Spoke Logistics reflected an employee relationship. Realin Decl., ¶3.

Sanchez worked approximately six days a week, averaging over 50 hours and 700 miles weekly. He was paid a flat daily rate of $340, without additional compensation for overtime. His delivery routes and schedules were assigned through an iPad and mobile app managed by Spoke and Apria, and new assignments were added throughout the day. He states that this made it difficult to take uninterrupted meal and rest breaks, and no formal system was provided to request them. *Id.*, ¶4.

Sanchez was required to use his own vehicle and cover related expenses, including fuel, insurance, and maintenance. He alleges he could not subcontract his work or use third-party equipment. Although the agreement allowed some independence, he asserts that his duties, schedule, and restrictions were consistent with those of a W-2 employee. He previously performed similar work for another company under employee classification. *Id.*, ¶5.

Four months after the *Sanchez* action, Plaintiffs Watson and McCarther filed a similar PAGA lawsuit against Spoke Logistics, initially in Orange County Superior Court. The case was amended and refiled in Alameda County Superior Court on June 6, 2024. Like Sanchez, the *Watson* plaintiffs worked as delivery drivers for Spoke and allege they were misclassified as independent contractors. Consequently, they claim they were unlawfully denied overtime pay, meal and rest breaks, reimbursement for business expenses, timely payment of final wages upon separation, and accurate itemized wage statements. *Watson* plaintiffs did not typically deliver for Apria Healthcare. *Id.*, ¶6.

On September 11, 2023, Spoke filed a cross-complaint against He Is The Way Transport Services, Inc. ("HWTS") in the *Sanchez* action, alleging HWTS was the actual employer of

Plaintiff Sanchez and responsible for any labor code violations. Realin Decl., ¶7. No cross-complaint was filed in the *Watson* action. Spoke asserted it acted only as a licensed broker and had an independent contractor relationship with HWTS under a July 5, 2022 Broker-Carrier Agreement. The agreement purportedly required HWTS to comply with the law and indemnify Spoke for losses from HWTS's conduct. *Id*., ¶8. HWTS disputed the enforceability of the indemnity provision, contending that California public policy prohibits indemnity for a party's own alleged labor law violations. *Dane-Elec Corp., USA v. Bodokh,* 35 Cal.App.5th 761 (2019).

After some litigation and discovery, the Parties attended a private mediation on September 18, 2025. The case eventually settled. For purposes of settlement, the Parties stipulated to filing a First Amended Complaint (FAC) alleging class claims and adding Watson and McCarther as named Plaintiffs in addition to Sanchez after which the Watson case will be dismissed; all claims released in the settlement are alleged in the FAC. Realin Decl., ¶9.

III. VIGOROUS PROSECUTION OF THIS ACTION

A. Summary of Investigation and Discovery Conducted

The Parties conducted a thorough investigation of the claims and facts alleged in this action, and Plaintiffs undertook an in-depth analysis of the legal principles applicable to their claims against Defendant. Plaintiffs reviewed data points and company documents to evaluate their misclassification claim. As a result of this careful investigation, both parties developed a clear understanding of their respective claims and defenses. Realin Decl., ¶10; Markham Decl., ¶3.

B. Settlement Reached after Arms-Length Negotiations with Assistance of Experienced Mediator

Plaintiffs retained counsel with extensive experience in prosecuting wage and hour class and representative actions. Markham Decl., ¶¶4-9; Khoury Decl., ¶¶2-12; Haines Decl., ¶¶3-5; Sirmabekian Decl., ¶¶15-19. Defendant was represented by experienced attorneys at Marron Lawyers, APC. On September 18, 2025, the Parties mediated this case before Jeffrey Fuchsman, a mediator with vast experience in wage and hour class actions. At the conclusion of the mediation session, the mediator issued a proposal, which the Parties accepted, resulting in a settlement in principle. Following several additional weeks of negotiations, the Parties finalized the terms of the settlement agreement. Khoury Decl., ¶14. The executed version of the Settlement Agreement is attached as **Exhibit 1** to Khoury Declaration.[3]

C. Summary of the Risks to Further Litigation

Although Plaintiffs are confident in their position, they recognize several risks to succeeding on the merits. Realin Decl., ¶11. First, Spoke will argue that the claims of over half of the drivers are barred by the class and PAGA settlement in *Quintero v. Apria Healthcare LLC*, Case No. 20STCV42367, which was finally approved on July 14, 2025. The $16.5 million settlement resolved claims of drivers supplied to Apria by vendors including Spoke, covering the period through January 30, 2025. The settlement includes a broad release extending to all potentially jointly liable parties, including Spoke. Accordingly, Spoke contends that class and PAGA claims by drivers assigned to Apria by Spoke through January 30, 2025 – which affects 54% of workweeks in this case, have already been released and cannot be re-litigated. Realin Decl., ¶12.

Second, Defendant will argue that Plaintiffs and other drivers were properly classified as independent contractors under the business-to-business exception in Labor Code § 2776, which triggers the *Borello* test. According to Defendant, because Spoke meets the statutory requirements for the business-to-business exemption, *Borello*—a flexible, multi-factor test—applies. Spoke will argue it operated solely as a broker, not a carrier, and exercised no control over how Plaintiffs performed their work, that Plaintiffs used their own vehicles, had motor carrier authority, set their own schedules, accepted or rejected work, were paid under negotiated contracts, and many operated their own businesses, employed drivers, and worked for other clients. Realin Decl., ¶13.

Third, even if the ABC test applies here, Defendant will argue that Plaintiffs still do not qualify as employees. According to Defendant, Plaintiffs operated through independent businesses that controlled their own operations and paid their own drivers. Spoke acted solely as a broker—it did not own vehicles, employ drivers, or direct how deliveries were performed. Defendant will argue that Plaintiffs were free to accept or reject assignments, contract with other brokers, and were

[3] The Settlement Agreement was submitted to the LWDA concurrent to the filing of this motion. Khoury Decl., ¶19, **Exhibit 2 - proof of submission**

solely responsible for licensing, insurance, and regulatory compliance. Government-imposed requirements, Defendant contends, do not establish "control" under the ABC test. Spoke will argue that because it did not control the manner or means of Plaintiffs' work, and because they operated as independent businesses, all three prongs of the ABC test are met—and hence, Plaintiffs were not misclassified. Realin Decl., ¶14.

Additionally, Defendant will argue that Plaintiffs' claims for unpaid wages—including overtime and meal and rest period premiums—depend entirely on the threshold issue of misclassification. If Plaintiffs were properly classified as independent contractors, these wage claims fail entirely, aside from the expense reimbursement claim. Realin Decl., ¶15.

Wage statement and untimely wage claims are further derivative of Plaintiffs' unpaid time, meal and rest break claims, so if Plaintiffs did not prevail on the underlying claims, their derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508, 524-25 (2009). Also, Defendant would 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). Realin Decl., ¶16.

Regarding Plaintiffs' unreimbursed business expenses claim, to the extent Plaintiffs and other drivers did not seek reimbursement of these expenses, this claim would be susceptible to summary judgment. *Hammit v. Lumber Liquidators*, 19 F. Supp. 3d 989, 1001 (S.D. Cal. 2014) (granting summary judgment when employee failed to request reimbursement).

IV. SUMMARY OF SETTLEMENT TERMS

A. Settlement Relief

Gross Settlement Amount:	$1,050,000. Settlement Agreement, ¶1.15.
Deductions from the Gross Settlement Amount:	• Attorneys' fees not to exceed 1/3 of the Gross Settlement Amount ($350,000.00). *Id.*, ¶¶1.5, 4.3; • Out-of-pocket litigation costs not to exceed $35,000. ¶¶1.5, 4.3; • Enhancement Awards to Plaintiffs not to exceed $15,000 to each Plaintiff. *Id.*, ¶¶1.13, 4.4;

	• PAGA penalties of $52,500 (of which 75% or $39,375 will be paid to the LWDA and 25% or $13,125 to Aggrieved Employees, who are Settlement Class Members employed at any time from March 30, 2022 to December 17, 2025. *Id.*, ¶¶1.21, 6.4, 10.2.4. • Administration costs of approximately $8,000. *Id.*, ¶¶1.30, 4.5.
Net Settlement Amount:	Approximately $559,500. *See id.*, ¶¶1.17.
Definition of Class Members:	All current and former Drivers who worked for Defendant in California during the Class Period. *Id.*, ¶1.6.
Class Period:	From September 18, 2021 to December 17, 2025. *Id.*, ¶1.8.
The number of Class Members and workweeks worked during the Class Period	300 Class Members; 11,200 workweeks. Realin Decl., ¶¶2, 17.
The average individual settlement payment	$50 per workweek; or approximately $1,865 per class member (without accounting for the number of workweeks worked). Realin Decl., ¶17.

1. *Settlement Formula and Distribution*

Class Members who do not opt out of the Settlement will receive their respective Settlement Payments from the Net Settlement Amount based on the number of workweeks they worked during the Class Period, without the need to submit a claim form. Settlement Agreement, ¶6.1, 6.2. Distribution amounts will be calculated and allocated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

Id.[4]

Class Members who do not opt out of the Settlement will release Defendant from all claims that relate to the causes of action asserted in this action – or those that could have been asserted in this action based on the facts alleged in Plaintiffs' complaints and PAGA letters. Settlement Agreement, ¶¶1.25, 8.2.2.

Settlement checks will be valid and negotiable for 180 days. Settlement Agreement, ¶10.3.2. After the expiration of the 180-day period, the Settlement Administrator will void any

[4] The PAGA Penalty Payment allocated to Aggrieved Employees will be calculated similarly on a pro rata basis, based on the total amount of pay periods PAGA Employees worked during the PAGA Period. *Id.*, ¶¶1.21, 1.23, 6.3.

uncashed checks, and, subject to the Court's approval, the total amount of uncashed settlement checks will be distributed to Legal Aid at Work, pursuant to California Code of Civil Procedure section 384(b). *Id.*

All Settlement Payments are subject to taxation and will be reported to the IRS and state tax authorities. Twenty percent (20%) of each Class Member's Settlement Payment will be allocated as wages, and eighty percent (80%) will be allocated as penalties and interest, with withholding to apply only to the portion allocated to wages. Settlement Agreement, ¶¶10.2.5, 10.2.6. Class Members shall seek their own tax advice regarding this Agreement.

2. *Attorneys' Fees and Costs*

The Parties agreed that, subject to approval by the Court, up to $350,000 (one-third) of the Gross Settlement Amount, may be allocated to attorneys' fees, and up to $35,000 may be allocated to reimburse Class Counsel for litigation costs and expenses. Settlement Agreement, ¶¶1.5, 4.3. Courts in California wage and hour cases, where the common fund is under $10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half International Inc.*, 1 Cal.5th 480, 503 (2016). Class Counsel intends to brief the fee application using both methodologies, as cross checks.[5] Any portion of the requested attorneys' fees and costs that are not awarded to Class Counsel shall be part of the Net Settlement Amount distributed to Class Members as provided in the Settlement Agreement. *Id.*, ¶1.5.

3. *PAGA Payment to Labor Workforce Development Agency*

The Parties agreed $52,500 of the Gross Settlement Amount will be allocated for payment under PAGA. Of this amount, 75% ($39,375) will be paid to the LWDA, and 25% ($13,125) to Aggrieved Employees, who are those Class Members who worked for Defendant from March 30, 2022 to December 17, 2025. Settlement Agreement, ¶¶1.21,1.22, 6.4, 10.2.4. The PAGA penalties

[5] 60% of attorneys' fees will be allocated to *Sanchez* counsel (of which 50.34% will be allocated to CKS, 33.33% to UELG, and 16.33% to MLF), and 40% of the fee will be allocated to *Watson* counsel, Sirmabekian Law Firm. The clients have consented to this fee split agreement in writing. Khoury Decl., ¶19.

to be paid under this Settlement represent almost 1% of the total potential maximum PAGA penalties for Plaintiffs' direct claims, assuming class members could prove misclassification and that they suffered four types of violations in <u>every single</u> pay period (11,200 pay periods times $100, multiplied by 5 penalties for unpaid time, meal breaks, rest breaks, sick pay, and unreimbursed expenses per pay period = $<u>5,600,000).</u> Realin Decl., ¶18. The subsequent penalties should be calculated at $100, not $200 per pay period because under *Amaral v. Cintas Corp. No. 2,* 163 Cal.App.4th 1157 (2008), for a plaintiff to recover $200 per subsequent violation an employer must have been cited first, which has not occurred in this action. *Id*. at 1207-09; *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) ("the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *see also Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438, 2 (S.D. Cal. June 6, 2017) (holding, based on *Amaral,* that $100 penalty per pay period is warranted because "no court, commissioner, or any other authority had held [that] Best Buy misclassified" the general managers."); *Trang v. Turbine Engine Components Technologies Corp.,* 2012 WL 6618854, *5 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"); *Amalgamated Transit Union Local* 1309, *AFL-CIO v. Laidlaw Transit Services, Inc.,* 2009 WL 2448430 at *9 (S.D. Cal. Aug. 10, 2009) (finding that California law imposes the "subsequent violation penalty" only after an employer has been notified by "the court or commissioner" that its conduct violates the Labor Code).

This allocation of the PAGA penalties falls within the range of other approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of 0.2% of the maximum, or $5 per pay period); *Ruch v. AM Retail Grp., Inc.,* 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that "$7,500 PAGA payment is reasonable when measured against the total overall settlement [of $345,000] and the possible weaknesses in Plaintiffs' case."); *see also Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) ($10,000 as PAGA penalties found reasonable).

4. *Settlement Administration Costs*

The Parties selected Phoenix Class Action Administration Solutions as the Settlement Administrator in this action. Settlement Agreement, ¶1.29. The costs of the Administrator, estimated at $8,000, will be deducted from the Gross Settlement Amount. *Id*., ¶1.30; Declaration of Michael Moore on behalf of Phoenix Settlement Administrators, ¶17. The Parties obtained bids from four settlement administrators, and Phoenix's was the most competitive bid. Khoury Decl., ¶16.

5. *Class Representatives' Enhancement Awards*

Defendant agreed, subject to Court approval, to pay up to $15,000 from the Gross Settlement Amount as an enhancement award to each Plaintiff for their services as class representatives. Settlement Agreement ¶¶1.13, 4.4. Any portion of the requested Enhancement Awards not awarded to the Class Representatives shall be part of the Net Settlement Amount, and shall be distributed to Settlement Class Members as provided in this Agreement. *Id*.

B. Settlement Administration

Within 14 calendar days after the preliminary approval, Defendant will provide Phoenix with a class list containing Class Members' contact information and sufficient information to determine the total number of workweeks worked within the relevant time periods. Settlement Agreement, ¶7.1. Within 14 calendar days thereafter, Phoenix will mail a Class Notice to each Class Member as provided in this Settlement. *Id*., ¶7.2. Phoenix will determine the eligibility for, and the amounts of, any Settlement Payments under the terms of this Agreement, process and distribute Class Members' payments, and process and mail tax payments to the appropriate state and federal taxing authorities. *Id*., ¶¶10.2, *et seq*, 10.3 *et seq*. Further, Class Members will also be able to contact the Settlement Administrator by telephone or e-mail, or access the settlement website,[6] if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. 1** to the Settlement Agreement. Also, any objections to or opt-outs from the Settlement must be delivered to the Settlement Administrator. Settlement Agreement, ¶¶8.2.1, 8.3.1.

V. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA

There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The trial judge exercises discretion in deciding whether to grant preliminary approval of a class action settlement and "great weight is accorded to [the] judge's views." *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1145 (2000).

Preliminary approval is the first of three steps of the settlement approval process, followed by notice to the class and a final approval hearing. *See* Manual for Complex Litigation, Second, ¶30A4 (1993). The Court does not need to perform a final analysis of the settlement's fairness to preliminarily approve a proposed settlement. Rather, a more detailed assessment is reserved for the final approval hearing, after class notice has been sent and class members have had the opportunity to object to or opt-out of the settlement. *See* Moore's Federal Practice, 23.165[3] (3d ed. 2005). Generally, there is an initial presumption of fairness when a proposed settlement, which was negotiated at arms'-length by Class counsel, is presented for court approval. 4 Newberg on Class Actions (4th ed. 2002), ¶11.41, p. 90. In approving a settlement where the class has not yet been certified, the court must first determine that a class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be shown at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

A. Settlement Amount Calculations – *Kullar* analysis

The settlement amount of $1,050,000 derives from Plaintiffs' claim that they were misclassified as independent contractors, and as a result, were not paid all wages, were denied meal and rest break premiums, and were not reimbursed for business expenses. Realin Decl., ¶19.

[6] The website will contain settlement-related documents, including notice of final judgment. C.R.C., Rule 3.771(b).

According to Defendant's records, class members collectively worked approximately 11,200 workweeks as of the date of mediation. *Id*. Plaintiffs earned approximately $340 per week. Based on a 42.5-hour workweek, this equates to an hourly rate of approximately $40 for the purposes of the calculations below. Defendant's maximum exposure is as follows:

Unpaid Overtime Claim: **$1,680,000**. This is based on Plaintiffs' schedule of working 42.5 hours per week; the 2.5 hours per workweek should be paid at an overtime rate of $60 per hour. With a total of 11,200 workweeks worked by all drivers, this results in 28,000 hours of unpaid overtime (2.5 hours × 11,200 workweeks). At the overtime rate of $60, the total damages for unpaid overtime amount to $1,680,000 (28,000 hours x $60/hour). Realin Decl., ¶20(i).

Meal Break Claim: **$896,000**. Plaintiffs estimate they were not able to take a compliant meal break twice a week. Thus, Spoke's realistic exposure for unpaid meal break premiums is 11,200 x $40 x 2 = $896,000. Realin Decl., ¶20(ii).

Rest Break Claim: **$896,000.** Plaintiffs estimate they were not able to take a rest break twice a week. Thus, Spoke's realistic exposure for unpaid meal break premiums is 11,200 x $40 x 2 = $896,000. Realin Decl., ¶20(iii).

Wage statement penalties: **$1,200,000**, based on the $50 per pay period for the initial violation (300 pay periods x $50 = $15,000) and $100 for the subsequent violations ($100 x 10,900 pay periods = $1,090.000). Thus, the total penalties amount to $1,105,000 ($15,000 + $1,090,000). However, this would be less the $4,000 cap per class member, thus the total maximum penalties are $1,200,000 (300 class members * $4,000). Realin Decl., ¶20(iv).

Waiting time penalties: Plaintiffs calculated daily wages for approximately 251 former employees at $470 (8 hours at $40 + 2.5 hours at $60), times 30 days, to amount to **$3,539,100**. Realin Decl., ¶20(v).

Unreimbursed Business Expenses: **$5,328,624**. Plaintiffs spent approximately $300 per week for fuel, $20 per week on cell phone, $70 for a commercial van insurance, and the DMV registration fee breaks down to about $9 per week. Routine maintenance is estimated at $30 per week, and oil changes—at five per year costing $200 each—add another $20 weekly. Altogether, these expenses total approximately $450 per week, and when multiplied by 11,200 class workweeks equal $5,040,000 in total Spoke's exposure. Realin Decl., ¶20(vi).

Labor Code 226.8 penalties for Willful Misclassification: $5,000 x 300 drivers = **$1,500,000**. Realin Decl., ¶20(vii).

Thus, Defendant's potential maximum liability for Plaintiffs' direct claims is **$8,800,624**, and an additional $6,239,100 for Plaintiffs' wage statement, waiting time, and willful misclassification penalties claims, possible only if Plaintiffs prevailed on their underlying claims, for a total of **$15,039,724**. Thus, the Gross Settlement Amount of $1,050,000 represents almost 12% Defendant's maximum potential liability for Plaintiffs' direct claims, and approximately 7% (6.98%) of Defendant's maximum liability for all of Plaintiffs' claims, without any discounts. Realin Decl., ¶21. However, when considering Spoke's plausible argument that the class claims applicable to 54% of workweeks at issue here have been resolved by the *Quintero* settlement, Spoke's maximum exposure for all claims is $6,918,273.04 (46% of $15,039,724). *Id*., ¶22. **Thus, this settlement represents 15.2% of Defendant's realistic liability for Plaintiffs' claims.** This is an excellent result and well within the range of – and exceeding - settlements commonly approved by California state and district courts. *Id*., ¶23. *See also* Section IV(B)(2) below for a detailed explanation.

B. The Proposed Settlement is Fair, Adequate, and Reasonable

The Court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996), *citing Officers for Justice,* 688 F.2d. at 625. The "fair, reasonable and adequate" test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.*, 141 Cal.App.4th 46, 61 (2006). In the absence of California law, the court might follow the federal authority. However, California courts have never adopted Rule 23 as "a procedural strait jacket;" to the contrary, trial courts have been urged to be flexible in dealing with class actions. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001), *citing Cartt v. Super. Ct*., 50 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be given considerable weight because of counsel's familiarity with the litigation, and previous experience with cases such as this one. *Officers for Justice,* 688 F.2d at 625. "We note that… settlement [is] the preferred means of dispute resolution…especially in complex class action litigation." *7-Eleven Owners*, 85 Cal.App.4th at 1151.

At the preliminary approval stage, the Court considers if:

> (1) the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with the range of possible approval.

In re Tableware Antitrust Litig., 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

1. *The Settlement is the Product of Serious, Informed and Noncollusive Negotiations*

This Settlement is the result of extensive and hard-fought negotiations. Khoury Decl., ¶¶14-15; Markham Decl., ¶3. Plaintiffs' counsels' law firms specialize in wage and hour class action litigation, and Defendant was represented by experienced attorneys at Marron Lawyers, APC.

Class Counsel analyzed pre-mediation document production and diligently investigated Class Members' claims. Realin Decl., ¶10; Markham Decl., ¶3; Section III(A), *supra*. Defendant produced policies, broker-carrier contracts, and data points for the driver group. *Id.* At the time the Parties agreed to attend mediation, the trial was set.

The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses of their respective positions. *See Adams v. Inter-Con Sec. Sys., Inc*., 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007) (preliminarily approving the settlement agreement after finding it was reached through extensive negotiations and plaintiff's counsel's thorough investigation of the claims); *Kullar v. Footlocker*, 168 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the potential value of the case and litigation issues to independently review the reasonableness of the settlement.).

Before this action settled, the Parties participated in mediation before an experienced neutral. Khoury Decl., ¶14; Markham Decl., ¶3; Section III(B), *supra*. That indicates the settlement was free of collusion. "The assistance of a well-respected mediator with substantial experience in employment litigation…supports approval of the settlement." *Murillo v. Pac. Gas & Elec. Co*., 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk*, 48 Cal.App.4th at 1802-03.

The Parties have been cooperative, yet aggressive, and displayed capable and experienced advocacy on both sides. Accordingly, "[t]here is … every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply Sys. Sec. Litig*., 720 F.Supp. 1379, 1392 (D. Ariz. 1989).

2. *The Settlement has no "Obvious Deficiencies" and Falls within the Approval Range*

"[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). Thus, when evaluating the amount offered in settlement, the Court should consider "the complete package taken as a whole," and the amount should "not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. at 625-28.

(i) The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements

Courts routinely approve class action settlements where the settlement amount is a lower percentage of the claimed amount of damages. *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (approving settlement representing 10% of potential value); *see also Thomas v. Cognizant Tech. Sols. U.S. Corp.*, 2013 WL 12371622, at *6 (C.D. Cal. June 24, 2013) (granting final approval in wage and hour action for settlement between 4.4% and 5% of maximum liability); *Villegas v. J.P Morgan Chase & Co*., 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012); *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *10 (2019) (6% of valuation); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 623-24 (N.D. Cal. 2014) (settlement between 9% and 27% of total potential liability fair, adequate and reasonable given the uncertainty of continued litigation); *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 459 (9th Cir. 2000) (16.67% of potential recovery adequate in light of plaintiff's risks). Simply put, "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean that [it] should be disapproved." *7-Eleven Owners*, 85 Cal.App.4th at 1150, citing *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

Here, the Settlement represents **15.2%** of Defendant's maximum potential liability for Plaintiffs' claims, without any risks, costs, and uncertainty of prolonged litigation. Realin Decl.,

¶23. Without accounting for the length of each class member's providing services for Defendant, a class member will recover on average **over $1,850** as a result of this settlement, or approximately $50 per workweek. *Id*., ¶24. This is an excellent result, well within the range of approved settlement payments. *See e.g.*, *Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *2, 6 (N.D. Cal. Nov. 21, 2012) (approving settlement with approximately $255 settlement payment per class member).

(ii) The Formula of Allocation based on Workweeks is Fair and should be Approved

Class Members will receive a portion of the Gross Settlement Amount based on the number of workweeks they worked for Spoke during the class period. This formula is realistic because Class Members' individual recovery is proportionate to the amount of time the Class Members worked for Defendant. Realin Decl., ¶25. As discussed in Section III(C), *supra*, when considering the substantial risks in further litigation and that a $1,050,000 award would not otherwise have been attainable, the substantial recovery for class members is reasonable. *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d at 458; *Sandoval v. Tharaldson Employee Mgmt.*, 2010 WL 2486346, at *7 (C.D. Cal. June 15, 2010).

3. *The Settlement does not Improperly Grant Preferential Treatment to the Class Representatives or Segments of the Class*

Class Representatives will each receive $15,000 for their time and efforts in representing the Class. Settlement Agreement, ¶¶1.13, 4.4. "Incentive awards [for class representatives] are fairly typical in class actions." *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010), citing *Rodriguez v. West Publ'g*, 563 F.3d 948, 958 (9th Cir. 2009). California courts agree that class representatives are entitled to such an award. *Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1394. "Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable." *Clark v. Am. Residential Servs*., 175 Cal.App.4th 785, 804 (2009), citing *Matter of Cont'l Ill. Sec. Litig*., 962 F.2d 566, 571 (7th Cir. 1992).

Here, the service awards to Plaintiffs are based on the extent of Plaintiffs' participation in this action and not conditioned upon Plaintiffs' support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (2013). Throughout this action, Plaintiffs assisted in investigation, participated in multiple call conferences with counsel, provided and reviewed documents and pleadings, and were on standby during mediation. Realin Decl., ¶30.

Courts award incentive awards in this range. *Ross v. U.S. Bank Nat'l Ass'n*, 2010 WL 3833922, at *3 (N.D. Cal. Sept. 29, 2010) (approving an award of $20,000 to each of four named plaintiffs based on their contributions to litigation and the risk that being a class representative would harm their reputation); *see also Ridgeway v. Wal-Mart Stores Inc.*, 2017 WL 4071293, at *19 (N.D. Cal., Sept. 14, 2017) ($15,000 incentive awards for each of the named plaintiffs awarded); *Low v. Trump University, LLC*, 246 F.Supp.3d 1295, 1316 (S.D. Cal. 2017) ($15,000 incentive award approved where plaintiffs "devoted significant amounts of time and energy" to the action); *Glass v. UBS Fin. Servs*., 2007 WL 221862 at *17 (2007) ($25,000 for each class representative in wage and hour action). Thus, the proposed service awards are reasonable.

4. *The Stage of Proceedings is Sufficiently Advanced to Permit Preliminary Approval of the Settlement*

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Nat'l Rural Telecomms. Corp*., 221 F.R.D. at 527. However, the settlement can be approved even in the absence of any discovery, if other factors are satisfied. *In re TD Ameritrade Account Holder Litig*., 2011 WL 4079226, at *6 (N.D. Cal. Sept. 13, 2011). The bottom line is that "the parties have sufficient information to make an informed decision about the settlement." *Durham v. Cont'l Cent. Credit, Inc*., 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011), citing *Linney v. Cellular Alaska P'ship*, 151 F.3d at 1239.

Here, the Parties developed a comprehensive understanding of their respective claims and defenses prior to settlement, through both written discovery and the informal exchange of information for mediation purposes. *See* Section III(A), *supra*; Realin Decl., ¶10. Specifically, Class Counsel had investigated class members' claims, examined documents and data, and prepared a damage model. *Id*., ¶6. 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 Defendant is fair, reasonable, adequate, and in the best interest of the Class. *Young v. Polo Retail, LLC*, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007).

C. The Proposed Class Meets the Qualifications for Certification for Settlement Purposes.[7]

To prevail on a motion for class certification, plaintiffs need to show that "the question is one of a common or general interest, of many persons, or…the parties are numerous, and it is impracticable to bring them all before the court." Cal. Code of Civ. Proc. § 382. The party seeking certification needs to prove that the class is both ascertainable and that there is a well-defined community of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 326 (2004). In *Sav-On Drug Store*, the court adopted a test for "community of interest," which consists of the following prongs: (1) there are predominant common questions of law or fact; (2) class representatives have claims typical to those of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

1. *An Ascertainable and Numerous Class Exists that can be Determined from Payroll Records*

A class is ascertainable when: (i) under the class definition the members are clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of time and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987); *Sevidal v. Target Corp*., 189 Cal.App.4th 905, 919-20 (2010). Typically, class members are ascertainable when they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc*., 195 Cal.App.4th 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919.

Here, the Class is composed of approximately 300 current and former drivers of Defendant in California, who can be identified and located from Defendant's business records. In California, as few as ten (10) or twenty-eight (28) members satisfied numerosity. *Bowles v. Super. Ct*., 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Defendant will

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[7] Defendant agrees to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. Settlement Agreement, at ¶11.2.

provide the Settlement Administrator with a database with all Class Members' names, contact information, and the number of relevant workweeks, and further steps will be taken to locate the Class Members for whom the addresses are not current. Settlement Agreement, ¶¶7.1, 7.3; *see also* Section VI, *infra*. Numerosity is satisfied, and the class is ascertainable.

2. *Common Issues of Law and Fact Predominate over any Individual Issues*

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Brinker Restaurant Corp. v. Superior Court,* 53 Cal.4th 1004, 1022 (2012). The court only determines whether or not "the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." *Sav-On Drug Stores*, 34 Cal.4th at 327.

Here, there are common questions of law and fact that apply to Class Members across the board, because all Class Members were subject to Defendant's classification as independent contractors which Plaintiffs argue was unlawful, method/rate of pay, meal and rest break and expense reimbursement policies and practices (or lack thereof). Realin Decl., ¶26. Those common questions predominate over any individual inquiries, in that "determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Those questions include: (i) Whether or not Class Members were misclassified as independent contractors; (ii) Whether or not Class Members were provided with off-duty, uninterrupted meal and rest breaks; (iii) whether Class Members were not paid overtime wages for hours worked over 40 in a week and 8 in a day; (iv) Whether or not Class Members incurred business expenses without reimbursement; (v) Whether or not Class Members were provided with all wages due upon separation under Labor Code section 203; (vi) Whether or not Class Members were provided with accurate wage statements as required by Labor Code section 226; (vii) Whether or not Defendant engaged in unfair business practices in violation of the UCL. Realin Decl., ¶27.

Because several issues are common to all Class Members, a class action is superior to numerous individual actions, and the maintenance of this action as a class action will save judicial resources, and help avoid inconsistent judgments. *See Savon Drugs*, 34 Cal.4th at 326. Class Members' interests are relatively small, so they are unlikely to prosecute separate actions. Plaintiffs' claims arise from their work for Defendant in California.

3. *Plaintiffs' Claims are Typical of the Claims of Class Members*

Typicality does not mean that the interests of representative plaintiffs must be identical to those of the absent class members. *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). They only need to be "reasonably co-extensive with those of absent class members." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Further, the representative plaintiff must be a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864, 875 (1971).

Here, Plaintiffs' claims arise from the same facts and legal theories as the Class Members' claims. Plaintiffs are members of the class of independent contractor drivers of Spoke in California, and subject to the same policies and practices of Spoke with respect to classification, pay, meal and rest breaks, and expense reimbursement. Realin Decl., ¶28.

4. *Plaintiffs and Class Counsel will Adequately Protect the Interests of the Class*

The adequacy of representation involves two conditions: the named plaintiff must be represented by counsel qualified to prosecute class actions of this type; and the named plaintiff's interests cannot be antagonistic to those of the class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976).

Here, Plaintiffs retained counsel with extensive experience in prosecuting wage and hour class and representative actions. Markham Decl., ¶¶4-9; Khoury Decl., ¶¶2-12; Haines Decl., ¶3-5; Sirmabekian Decl., ¶¶15-19. In addition, Plaintiffs have the same interests as the rest of the Settlement Class, because they have allegedly been injured in substantially the same manner. Realin Decl., ¶29. Thus, the Court should certify Plaintiffs' class claims for the purposes of this Settlement.

VI. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED

A. Proposed Notice Plan

Within 14 calendar days after receiving Class List from Defendant, the Settlement

Administrator will send Class Notice to Class Members via first class mail. Settlement Agreement, ¶7.1. Before mailing the Notice, the Settlement Administrator will run a check of the Class Members' addresses against those contained in the USPS's National Change of Address database, and take any other appropriate steps to validate the correctness of the addresses provided by the Defendant. *Id*. If the Notice is returned with the forwarding address, the Settlement Administrator will use the forwarding addresses to locate the missing Class Members, and re-mail the Notice to the correct address. *Id*., ¶7.3. If a Notice is returned as non-deliverable with no forwarding address, the Settlement Administrator shall conduct an advanced skip trace to locate the most current address of the person to whom the Notice was addressed, and shall resend the Notice to any updated address within five (5) calendar days. *Id*. Any responses from the Class Member (*i.e.*, a dispute regarding calculation of workweeks, a Request for Exclusion, or an objection) are due to the Administrator by the Notice Response Deadline, unless extended 14 calendar days due to remailing. *Id*., ¶¶1.28, 8.1, 8.2.1, 8.3.1.

The Class Notice will summarize the terms of the Settlement Agreement, advise the Class Members of their estimated individual settlement payment(s), and inform Class Members of their right to object to or exclude themselves from the Settlement within 60 days after the Notice mailing. **Ex. 1**. Because this is a California-only class, and the mailing will occur only in California, 60 days to opt out from or object to the Settlement is sufficient. Khoury Decl., ¶¶14, 17. Further, because Class Members worked as drivers throughout California locations, communicating with Spoke and others in English, English-only notice is sufficient. *Id*, ¶18.

B. The Proposed Notice to the Class is Fair and Adequate

The Parties agreed on the language of the proposed class notice. Khoury Decl., ¶17. If the Court concludes after a preliminary evaluation of the settlement that the relief offered and notice provided are fair and adequate, the Court should order that the class notice be provided. Manual for Complex Litig., Second, § 21.632 at 321. The threshold requirement regarding the sufficiency of class notice is whether the means proposed for distributing the notice are reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the right to opt out of or object to the settlement. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane v.*

Cent. Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950); *see also* Cal. Rules of Court, Rule 3.766.

Here, the Notice is more than sufficient, because it gives Class Members, in an easy to understand and clear language: (1) basic information about this action and the Settlement; (2) an estimate of the weeks Class Members worked during the Class Period, and an explanation how Class Members can dispute this calculation; (3) an explanation how the payout from the Settlement will be calculated for each Class Member, and an estimate of a Class Member's Settlement Payment(s); (4) an explanation how Class Members can exercise their right to opt out from, or object to, the Settlement; (5) an explanation that any claims against the Defendant that could have been litigated in this Action will be released if the Class Member does not opt out; (6) name of Class Counsel and information regarding attorneys' fees and costs; (7) the date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing; and (8) the telephone and e-mail number, as well as website address, where Class Members can obtain additional information. *See* Ex. 1 (proposed Class Notice).

Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the California Rules of Court, Rules 3.766 and 3.769(f).

VII. CONCLUSION

For the foregoing reasons, Plaintiffs' unopposed motion should, respectfully, be granted.

Respectfully submitted,
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