BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Email: norm@bamlawca.com
Website: www.bamlawca.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PABLO ACOSTA, COLLEEN DUARTE, CALVIN SMITH, SLEEM SHEIKH, and CHIA-CHEN CHANG, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

vs.

AXLEHIRE, INC., a Corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **23CV057116**
[consolidated with Case No. 23CV055896]

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

Hearing Date: August 5, 2025
Hearing Time: 2:30 p.m.
Reservation ID: 780921156062

Judge: Hon. Somnath Raj Chatterjee
Dept.: 21

Action Filed: December 1, 2023
Trial Date: Not set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

<u>Statutes, Rules and Regulations:</u>

<u>Secondary Sources:</u>

I. INTRODUCTION

Plaintiffs Pablo Acosta, Colleen Duarte, Calvin Smith, Sleem Sheikh, and Chia-Chen Chang ("Plaintiffs") respectfully submit this memorandum in support of the unopposed motion for preliminary approval of the proposed class and representative action settlement with Defendant Jitsu, Inc. (formerly known as Axlehire, Inc.) ("Defendant"), and seek entry of an order: (1) preliminarily approving the Class Action and PAGA Settlement Agreement ("Agreement"); (2) for settlement purposes only, conditionally certifying the Class, which is comprised of "all individuals who are or previously contracted with Defendant as couriers in the State of California at any time during the Class Period", which is December 1, 2019 through March 17, 2025; (3) provisionally appointing Plaintiffs as the Class Representatives for settlement purposes only; (4) provisionally appointing Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) provisionally appointing and approving Apex Class Action LLC as Administrator, and (8) scheduling a final approval hearing date, proposed for December 16, 2025 to consider Plaintiffs' motion for final approval of the settlement and for approval of attorneys' fees and expenses.

Plaintiffs and Defendant (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.[1] A copy of the Agreement is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug ("Decl. Nordrehaug"), served and filed herewith. Plaintiffs now seek preliminary approval of the Agreement, which will resolve the litigation in its entirety.

As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Two Million Four Hundred Thousand Dollars ($2,400,000) (the "Gross Settlement Amount") is to be paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the Parties and will be made in full and final settlement of the Released Class Claims in exchange for the Individual Class Payments to Participating Class Members from the

---

[1] Capitalized terms shall have the same meaning as defined in the Agreement.

Net Settlement Amount, and also includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

$2,400,000 (Gross Settlement Amount)
- $75,000 (Plaintiffs' proposed Class Representative Service Payments not to exceed $15,000 each)
- $20,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- $800,000 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
- $100,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
- $75,000 (Administration Expenses Payment - not to exceed amount)

$1,330,000 (Net Settlement Amount)

Based upon 14,000 Class Members who collectively worked 160,449 Workweeks, the Gross Settlement Amount provides an average value of $171 per Class Member and $14.95 per Workweek and after deductions the Net Settlement Amount provides an average recovery of $95 per Class Member and a recovery of $8.28 per Workweek. Decl. Nordrehaug at ¶6.

On January 16, 2025, the Parties participated in an all-day mediation session presided over Kevin Barnes, a respected and experienced mediator of wage and hour class actions. Following the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5. A presumption of fairness exists as: (1) the Settlement was reached through extensive, mediated arm's-length negotiations; (2) sufficient investigation and discovery was conducted, which allowed Class Counsel to act intelligently; and (3) Class Counsel are experienced in similar wage-and-hour class litigation. Additionally, preliminary approval is appropriate as the Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Two Million Four Hundred Thousand Dollars ($2,400,000).

(Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment which is allocated between the LWDA PAGA Payment and the Individual PAGA Payments. (Agreement at ¶ 1.22.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator in three separate installments as follows: (a) 38% twenty-one (21) days after the Effective Date, (b) 31% one year after the first payment, and (c) the final 31% of the Gross Settlement Amount one year after the second payment. (Agreement at ¶ 4.3.) On a pro rata basis, the Administrator shall proportionately make a total of three (3) payment distributions with each distribution being made within thirty (30) days of receipt of each installment from Defendant. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

The amount remaining in the Gross Settlement Amount after the deduction of Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representatives Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment (called the “Net Settlement Amount”) shall be allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement Amount, the Individual Class Payment for each Participating Class Member will be calculated as follows: (1) 56% of the Net Settlement Amount will be allocated to the workweeks prior to the enactment of Proposition 22 from December 1, 2019 to December 31, 2020 ("Pre-Prop. 22 Portion"); and (2) 44% of the Net Settlement Amount will be allocated to the workweeks beginning after the enactment of Proposition 22 from January 1, 2021 to the end of the Class Period ("Post-Prop 22 Portion"). An Individual Class Payment calculated by (1) (a) dividing the Pre-Prop. 22 Portion of the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members from December 1, 2019 through December 31, 2020 and (b) multiplying the result by each Participating Class Member's Workweeks from December 1, 2019 through December 31, 2020, and (2) (a) dividing the Post-Prop. 22 Portion of the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members from January 1, 2021 to the end of the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks from January 1, 2021 to the end of the Class Period, and (3) summing these totals. (Agreement at ¶ 3.2(e).) Workweeks will be based on Defendant's records, however, Class Members will have the right to challenge the number of Workweeks. Decl. Nordrehaug at ¶17.

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed Participating Class Members who will be bound by the Settlement and will be entitled to receive an Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who submit an opt-out request, will be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

A Participating Class Member must cash his or her Individual Class Payment check within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any funds represented by such checks sent to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of C.C.P. § 384(b). (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

Subject to Court approval, the Parties have agreed on Apex Class Action to administer the Settlement ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement administration in an amount not to exceed $75,000. (Agreement at ¶ 3.2(c).) Apex Class Action provided a capped estimate of $71,250 for administration expenses. Decl. Nordrehaug at ¶20.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed $20,000. (Agreement at ¶ 3.2(b).) Subject to Court approval, the Agreement provides for a payment of no more than $15,000 each to the Plaintiffs as their Class Representative Service Payments. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, *et seq.* ("PAGA"). The PAGA Penalties are $100,000. (Agreement at ¶¶ 1.37 and 3.2(d).) Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees calculated by: (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($25,000) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl. Nordrehaug at ¶22.

III. CASE BACKGROUND

On December 1, 2023, plaintiffs Pablo Acosta and Colleen Duarte filed this putative Class Action in Alameda Superior Court against Defendant alleging seven causes of action: (1) unfair competition in violation of the California Business and Professions Code § 17200, et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods; (5) failure to provide rest breaks, (6) failure to provide accurate itemized wage statements; and, (7) failure to reimburse business expenses (the "Class Action"). On December 1, 2023, plaintiffs Pablo Acosta and Colleen Duarte filed a Representation Action Complaint against Defendant in the Superior Court of the State of California, County of Alameda, asserting a single cause of action for violation of the PAGA, Case No. 23CV055896 (hereinafter, the "PAGA Action"). On July 22, 2024, the Court ordered the Class Action and the PAGA Action consolidated. Decl. Nordrehaug at ¶¶ 7-8.

The Parties engaged in thorough investigation and the exchange of documents and information in connection with the Action for more than a year which permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated in mediation on January 16, 2025 with Kevin Barnes, which after arms' length negotiations, resulted in this

Settlement. Decl. Nordrehaug, ¶12. Following mediation, and pursuant to the Settlement, on June 26, 2025 the Plaintiffs filed a First Amended Complaint (the "Operative Complaint") which added plaintiffs Calvin Smith, Sleem Sheikh, and Chia-Chen Chang, and added additional claims that, inter alia, Defendant violated the Labor Code and failed to comply with Prop 22, i.e., Bus. & Prof. Code Section 7450. Decl. Nordrehaug, ¶9.

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).[2] Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection."

---

[2] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

Sayaman v. Baxter Healthcare Corp., 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class … that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba, supra,* 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794. In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the 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. Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors To Be Considered In Granting Preliminarily Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and therefore the presumption applies.

1. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement. The Released Class Claims are appropriately tethered to the allegations of the Operative Complaint. (Agreement at ¶¶ 1.39 and 6.2.)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel have previously litigated and certified similar claims against other alleged employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

The Parties attended an arms-length mediation session with Kevin Barnes, a respected and experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendant provided Class Counsel with pay and work data and other information regarding the Class Members, various internal documents, and other compensation and work-related materials. Class Counsel analyzed the data with the assistance of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable, and adequate.

As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Two Million Four Hundred Thousand Dollars ($2,400,000). The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

Class Counsel has conducted an investigation into the facts of the class action. Informal discovery were obtained, which included the production of hundreds of pages of relevant documents and data. Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. In addition, Class Counsel previously negotiated settlements with other alleged employers in actions involving nearly identical issues and analogous defenses. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believe that the Settlement with Defendant on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14.

Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against Defendant through possible appeals which could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly, "[t]here is likewise 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 System Sec. Litig.*, 720 F. Supp. at 1392.

2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within the Range for Approval

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 14,000 Class Members who collectively worked 160,449 Workweeks, the Gross Settlement Amount provides an average value of $171 per Class Member and $14.95 per Workweek and after deductions the Net Settlement Amount provides an average recovery of $95 per Class Member and a recovery of $8.28 per Workweek. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due for the Class at the time of the mediation were calculated by Berger Consulting, Plaintiffs' damage expert. As to the Class whose claims are at issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid wages for the employees. The important consideration of the damages in this case was the voter approval of Proposition 22 which enacted Business & Professions Code § 7450, et seq. declaring app based delivery drivers to be independent contractors, if certain conditions are met. As a result, Plaintiffs considered the pre-Proposition 22 damages separately from the post-Proposition 22 damages.

For the pre-Proposition 22 damages, the maximum potential damages were calculated to be $313,300 for the alleged unpaid wages due to off-the-clock work at 1 hour per week, $313,300 for alleged meal period damages based upon an alleged 1 missed meal period per week, and $313,300 for alleged rest period damages based upon an alleged 1 missed rest period per month, $1,050,664 for alleged unreimbursed business expenses for personal vehicle usage of 41 average miles per day. As a result, the pre-Proposition 22 maximum damages were $1,990,564. Decl. Nordrehaug, ¶6. For the post-Proposition 22 damages, the Business & Professions Code § 7451 provided a complete defense to the proposed damages, and given the Defendant showing of substantial compliance with Proposition 22, Plaintiffs considered it extremely unlikely that these damages could be recovered. The maximum post-Proposition 22 damages in the absence of this complete defense were $1,178,392 for off-the-clock, $1,178,392 for the meal period claim, $1,178,392 for the rest period claim, and up to $15 million for the alleged unreimbursed business expenses for personal vehicle usage, for a maximum total of $18,535,176. However, given the Proposition 22 complete defense, Plaintiffs believe that these damages are highly unlikely as in less than a 10% chance of recovery, and applying this risk rating provides a more realistic damage recovery of less than $1,853,518. Further, the far more likely result is that in light of the defense, any recovery the post-Proposition damages would be limited to the sporadic instances where the Class earnings fell below the "Earnings Guarantee" in Proposition 22. This maintains the independent contractor status defense, and simply guarantees that Class Members would earn 120% of minimum wages for engaged time plus $0.30 per mile. Under this Proposition 22 recovery, few earnings periods would be recoverable, and only in small amounts representing the different to this "Earnings Guarantee". Defendant vigorously disputed Plaintiffs' calculations and exposure theories, and contends that at all times it complied with the law including Proposition 22, which would provide a complete defense to Plaintiffs' claims. Decl. Nordrehaug, ¶6.

Consequently, the Gross Settlement Amount of $2,400,000 represents a reasonable percentage of the maximum value of the alleged damages, which are less than $3,844,082.[3] While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226 for waiting time penalties and wage statement penalties, Plaintiffs gave negligible value to these penalty claims at mediation because these claims were subject to additional, separate defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class Members were properly compensated and classified as independent contractors. *See Nordstrom Commission Cases*, 186 Cal.

---

[3] Because the PAGA claim is not a class claim and primarily is paid to the State of California, Plaintiffs did not include the PAGA claim in this discussion of the value of the class claims. The PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due."). Importantly, the recent decision that good faith belief of compliance by the employer in *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for waiting time and wage statement penalties, even if some wages were owed to the Class. The above maximum calculations should then be adjusted further in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of claims in this case and the defenses asserted by Defendant, this Settlement is fair and reasonable.[4] Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted that Class Members were correctly classified as independent contractors and compensated in accordance with Proposition 22. Defendant argued that Plaintiffs' claims were entirely barred by Proposition 22, and overcoming the Proposition 22 defense would have been extremely difficult and unlikely, Defendant maintained that it complied fully with Proposition 22 and satisfied the "Earnings Guarantee." Defendant also argued that based on its facially lawful practices, Defendant acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. See e.g. *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024) ("[I]f an employer reasonably and in good faith believed it was providing a complete

---

[4] See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a settlement where the settlement amount constituted approximately 25% of the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class settlement which represented "roughly one-sixth of the potential recovery".) See also *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%" of maximum valuation).

and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law.”). If successful, Defendant’s defenses could eliminate or substantially reduce any recovery to the Class. Plaintiffs believe that there is a low possibility these defenses could be overcome, therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any individuals other than themselves. At the time of the mediation, Defendant forcefully opposed the propriety of class certification, arguing that individual issues precluded class certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. While other cases have approved class certification in wage and hour claims, class certification in this action was hotly disputed and the maintenance of a certified class through trial was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

After arm’s length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of $2,400,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

> In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. ‘The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.’"

2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

3. The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class

The relief provided in the Settlement will benefit all members of the Class. The Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class Members are all determined under a neutral methodology. Each Participating Class Member will receive the same opportunity to participate in and receive payment through a neutral formula that is based upon the Workweeks for that individual. Decl. Nordrehaug, ¶4.

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs performed their duties admirably by working with Class Counsel over the course of litigation. The Declarations of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage, the requested service award not to exceed amount is within the accepted range of awards for purposes of preliminary approval. *See e.g. Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of $15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal. 2019) (granting request for $12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.,* 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. 2008) (awarding $25,000 service award in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the plaintiffs for the time and effort expended on the case, for the risk of litigation, for the fear of suing an alleged employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before the Action was filed, and during the course of litigation, Class Counsel engaged in informal discovery to obtain necessary information. Class Counsel conducted a review and analysis of the relevant documents and data. Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions.

Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶29.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

Plaintiffs contend that the proposed Settlement meet all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should conditionally certify the Class for settlement purposes only, defined as follows:

> All individuals who are or previously contracted with Defendant as couriers in the State of California at any time during the Class Period.

(Agreement at ¶ 1.5.)

The Class Period is December 1, 2019 through March 17, 2025. (Agreement at ¶ 1.13.)

A. California Code of Civil Procedure § 382

Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*citations omitted*). The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004).

While Defendant reserves all rights to dispute that the Plaintiffs can satisfy these requirements, the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the proposed Class should be certified for purposes of settlement only. (Agreement at ¶ 2.10.)

B. The Proposed Class Is Ascertainable and Numerous

Plaintiffs bring this action on behalf of a Class of couriers in California during the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be determined through examination of Defendant's files. Given that the Class consists of approximately 14,000 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the estimated 14,000 couriers that comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

Commonality exists if there is a predominant common legal question regarding how an company's policies impact its workers. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

Here, Plaintiffs contend that common questions of law and fact are present, specifically the common questions of whether Defendant's practices were lawful, whether Defendant misclassified Plaintiffs, whether Plaintiffs' claims were barred by Proposition 22, whether Class Members were lawfully compensated, whether Defendant's practices failed to meet the "Earnings Guarantee", whether Defendant failed to provide required expense reimbursement, and whether Class Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend that certification of this Class is appropriate because Defendant allegedly engaged in uniform policies and practices with respect to the Class Members. As a result, these common questions of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that common questions predominate but will not oppose such a finding for purposes of this Settlement only.

D. The Claims of the Plaintiffs Are Typical of the Class Claims

The typicality requirement requires the Plaintiffs to demonstrate that the members of the class have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon*, *supra*, 150 F.3d at 1020, the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical."

In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like every other member of the Class, provided services for Defendant as a courier, and, alleges like every other member of the Class, they were subject to the same policies and practices. Plaintiffs, like every other member of the Class, also claim owed compensation as a result of the Defendant's company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from the same course of conduct by Defendant, involve the same issues, and are based on the same legal theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert that the typicality requirement is met as to the common issues presented in this case. Defendant does not oppose a finding of typicality for purposes of this Settlement only.

E. The Class Representation Fairly and Adequately Protected the Class

Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with Class Counsel, provided documents and information to Class Counsel, and participated in the investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained competent counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories. Under such circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

F. The Superiority Requirement Is Met

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

> Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues."

Sav-On, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs, as class certification would serve as the only means to deter and redress the alleged Labor Code violations. *Linder*, *supra*, 23 Cal.4th at 434 (relevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress the alleged wrongdoing)While Defendant disputes that class treatment is superior, Defendant does not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 8.4(b).)

"The principal purpose of notice to the class is the protection of the integrity of the class action process." *Cartt v. Superior Court,* 50 Cal.App.3d 960, 970 (1975). The notice "must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members." *Wershba*, *supra*, 91 Cal.App.4th at 224, 251. Additionally, the notice given should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*, *supra*, 50 Cal.App.3d at 974. However, there is no statutory or due process requirement that all class members receive action notice. *Id.*

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (*See* Exhibit "A" to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the applicable release; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service award request; and (vi) the anticipated expenses of the Administrator. A Spanish translation will be included with the Class Notice. (Agreement at ¶ 1.11.) Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have sixty (60) days from the date that the Class Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit a written objection, which deadline shall be extended by 14 days for re-mailings. (Agreement at ¶¶ 1.43, 8.5, 8.7.) Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Individual Class Payment. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

VII. CONCLUSION

Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final approval hearing for the proposed date of December 16, 2025, which date is at least one hundred twenty (120) days from the date of Preliminary Approval.

Dated: July 10, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: *_/s/ Kyle Nordrehaug_*

Kyle R. Nordrehaug, Esq.,
Attorney for Plaintiffs