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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

ANTHONY VASQUEZ, MELVIN
WILLIAMS, JAIME FURLOUGH, and
MICHAEL CHEN on behalf of
themselves and all similarly situated
persons, and the general public,

Plaintiffs,

vs.

XPRESS GLOBAL SYSTEMS LLC and
DOES 1 through 25, inclusive,

Defendant.

Case No. 23CV034375

[Assigned for all Purposes to the Hon. Michael
Markman, Dept. 23]

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: June 27, 2024
TIME: 10:00 a.m.
DEPT: 23

Res. ID: 241640102506

[Complaint filed: May 24, 2023]

1 **TO THIS HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT** on June 27, 2024, at 10:00 a.m. in Department 23 of the
4 above-captioned court located at 1221 Oak Street, Oakland, CA 94612, Plaintiffs ANTHONY
5 VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, MARTHA LOPEZ and MICHAEL
6 CHEN will, and hereby do, move for an order:

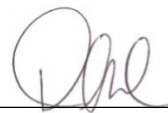
- 7 1. Granting preliminary approval of the proposed Class Action Settlement Agreement;
- 8 2. Appointing Plaintiffs as the Class Representatives;
- 9 3. Appointing Plaintiffs' counsel as Class Counsel;
- 10 4. Appointing Phoenix Class Administration Solutions as the Settlement Administrator;
- 11 5. Approving the form of notice to the Class and Notice Procedures;
- 12 6. Setting the hearing date for a Motion for Final Approval.

13 This motion is made on the ground that the settlement is fair, reasonable, and adequate
14 because it is the product of arm's-length, good-faith negotiations after significant litigation, and given
15 the relative strengths and weaknesses of the claims and defenses, as well as the risks involved in
16 pursuing further litigation. This motion will be based upon this Notice, the accompanying
17 Memorandum of Points and Authorities, Declaration of Reuben D. Nathan, Declaration of Brian J.
18 Kowalski, as well as the pleadings and papers on file herein and upon any other matters that may be
19 presented to the Court at the hearing.

20
21 Dated: June 4, 2024

Respectfully Submitted,

22 **NATHAN & ASSOCIATES, APC**

23
24 

25 Reuben D. Nathan

26 Attorneys for Plaintiffs
27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs ANTHONY VASQUEZ, MELVIN WILLIAMS, JAIME FURLOUGH, MARTHA
4 LOPEZ and MICHAEL CHEN (“Plaintiffs”) and Defendant XPRESS GLOBAL SYSTEMS LLC
5 (“Defendant” or “XPRESS”) have reached a proposed settlement that resolves this putative wage-
6 and-hour class action and PAGA action and seek preliminary approval of this settlement pursuant to
7 California Code of Civil Procedure §384 and California Rules of Court, Rule 3.769.

8 XPRESS is a privately held trucking company. Defendant employed Plaintiff ANTHONY
9 VASQUEZ from approximately April 2021 through the period ending in or about November 2022.
10 Defendant employed Plaintiff MELVIN WILLIAMS, from approximately March 2019 through
11 September 2023. Defendant currently employs Plaintiff MICHAEL CHEN, and he was
12 approximately hired in December 2021. Defendant employed Plaintiff JAIME FURLOUGH from
13 approximately June 2021 through the period ending in or about August 2022. Defendant employed
14 Plaintiff MARTHA LOPEZ from approximately February 2022 through the period ending in or about
15 December 2023. The parties have reached a settlement of the claims alleged in the lawsuit on behalf
16 of the following class:

17 All current and former employees of Defendant who worked for
18 Defendant in a non-exempt position¹ in California at any point
19 between November 13, 2021 and January 31, 2024.

20 The settlement class consists of 249 employees and the Settlement provides the settlement
21 class with an average payment of approximately \$1,506.02 gross recovery per class member. The
22 settlement represents more than 62.5% of the total actual exposure for non-exempt employee class
23 members if Plaintiffs were successful on all class claims. The Settlement will also provide a payment
24 of \$7,500.00 to the California Labor and Workforce Development Agency (i.e., 75% of the
25 \$10,000.00 amount allocated to resolve the PAGA allegations). This is an excellent result for the
26 class, which consists of 249 individuals (current and former similarly situated employees within the
27 statute of limitations) and the LWDA. This Settlement will fully resolve the lawsuit in connection

28 _____
¹ Non-exempt employees include drivers and long-haul drivers, as well as administrative staff involved in dispatch.

1 with the claims alleged in the Second Amended Complaint (“SAC”). As set forth below, the
2 settlement is fair, reasonable, and adequate, and Plaintiff respectfully requests that the Court grant
3 preliminary approval.

4 **II. RELEVANT FACTUAL BACKGROUND**

5 **A. The Parties and Plaintiffs’ Allegations**

6 Defendant employed Plaintiff ANTHONY VASQUEZ from approximately April 2021
7 through the period ending in or about November 2022. Defendant employed Plaintiff MELVIN
8 WILLIAMS, from approximately March 2019 through September 2023. Defendant currently
9 employs Plaintiff MICHAEL CHEN, and he was approximately hired in December 2021. Defendant
10 employed Plaintiff JAIME FURLOUGH from approximately June 2021 through the period ending
11 in or about August 2022. Defendant employed Plaintiff MARTHA LOPEZ from approximately
12 February 2022 through the period ending in or about December 2023. See Declaration of Reuben
13 D. Nathan (“Nathan Decl.”) ¶ 5; SAC ¶¶ 12-16.

14 Plaintiffs and all other similarly situated employees were employed by Defendant in non-
15 exempt positions including drivers as well as administrative staff involved in dispatch, which are
16 related to Defendant’s trucking company. As non-exempt and dispatcher employees, Plaintiffs allege
17 that they were not paid for all hours worked, including overtime, denied meal and rest breaks, did not
18 receive proper wage statements, were not paid all wages upon separation, and not reimbursed for all
19 business expenses. The violations were consistent (i.e., not paid all wages owed including overtime,
20 premium pay, did not receive proper wage statements, were not paid or reimbursed for business-
21 related expenses) throughout their employment. Nathan Decl. ¶ 6.

22 Plaintiffs consist of former and current employees of Defendant that discussed the alleged
23 wage and hour violations amongst each other and with others in similar positions (i.e., failure to be
24 reimbursed, not being paid all wages owed, and shortened/interrupted rest breaks). Those colleagues
25 verified to Plaintiffs that they had experienced the same or similar violations that Plaintiff complained
26 of.

27 The operative SAC alleges that Defendant failed to reimburse business expenses, failed to pay
28 overtime and double time, failed to provide lawful meal periods, failure to provide lawful rest periods,

1 did not provide proper wage statements, did not pay all wages upon separation, engaged in unfair
2 competition, and is liable for PAGA penalties.

3 Plaintiffs' unpaid wage claim is based on allegations that non-exempt employees were
4 required to work overtime hours off-the-clock in any given month, meal/rest breaks were
5 interrupted/shortened approximately, and Defendant's failed to pay all wages owed upon separation.

6 Plaintiffs' reimbursement claim is based on allegations that Plaintiffs along with other non-
7 exempt employees were required to use their personal cell phones for work-related purposes such as
8 calls and messages from Defendant, downloading phone applications for work purposes, receiving
9 load and delivery information, uploading of documents, speaking with Defendant's office and/or
10 dispatch, speaking with Defendant's customers, directions, and group chats.

11 The wage statement claim and civil penalties are derivatives of the claim for unpaid wages,
12 reimbursement claim, improper meal and rest period claim, and the unfair business practices claim is
13 predicated on the California Labor Code violations.

14 The Class Period is from November 13, 2021 through January 31, 2024. See Class Action
15 Settlement Agreement ("Settlement Agreement"), Ex. 1 to Nathan Decl., para. 1 (I) p. 2.

16 **B. Relevant Procedural History**

17 On April 19, 2023, Plaintiffs provided written notice to the LWDA and Defendant of the
18 specific provisions of the Labor Codes they contend were violated, and the theories supporting their
19 contention. On March 21, 2024, Plaintiffs provided amended written notice to the LWDA and on
20 March 22, 2024, Plaintiffs provided Defendant of additional provisions of the Labor Codes they
21 contend were violated, and the theories supporting their contention. Nathan Decl. ¶ 7; SAC ¶119.

22 On May 24, 2023 Plaintiffs filed their class action complaint in the Alameda County Superior
23 Court alleging causes of action: (1) Failure to Reimburse Expenses, (2) Failure to Pay Overtime; (3)
24 Improper Meal Periods; (4) Improper Rest Periods; (5) Improper Wage Statements; (6) Wages Not
25 Paid Upon Separation, and (7) Unlawful Business Practices. Nathan Decl. ¶ 8.

26 On July 26, 2023, Defendant filed its Answer to Plaintiffs' Complaint. Nathan Decl. ¶ 9.

27 //

28 //

1 On July 26, 2023, Plaintiffs filed a class action First Amended Complaint alleging causes of
2 action: (1) Failure to Reimburse Expenses, (2) Failure to Pay Overtime; (3) Improper Meal Periods;
3 (4) Improper Rest Periods; (5) Improper Wage Statements; (6) Wages Not Paid Upon Separation, (7)
4 Unlawful Business Practices, and (8) Violation of Labor Code § 2698 *et seq.* Nathan Decl. ¶ 10.

5 On August 29, 2023, Defendant filed its Answer to Plaintiffs' First Amended Complaint.
6 Nathan Decl. ¶ 11.

7 On May 30, 2024, the Parties filed a Stipulation and [Proposed] Order for Plaintiff to file
8 Second Amended Complaint ("Stipulation"), which alleges causes of action: (1) Failure to Reimburse
9 Expenses, (2) Failure to Pay Overtime; (3) Improper Meal Periods; (4) Improper Rest Periods; (5)
10 Improper Wage Statements; (6) Wages Not Paid Upon Separation, (7) Unlawful Business Practices,
11 and (8) Violation of Labor Code § 2698 *et seq.* The Stipulation is currently pending with the Court.
12 Plaintiffs' SAC will be due for filing within three days of the Court's Order. Nathan Decl. ¶ 12.

13 Defendant's Answer to the SAC will be due for filing three days from the date of service of
14 the SAC. Nathan Decl. ¶ 13.

15 **C. Discovery and Investigation**

16 Plaintiffs' counsel sought and received information for the number of employees, the number
17 of pay periods, the number of workweeks, dates of employment, the average pay rate, and any meal
18 and rest break premiums paid. As a part of the mediation, Defendant provided information based on
19 a randomized sampling of information for 72 class members. Defendant also provided Plaintiffs with
20 hundreds of pages of documents and various other forms of data. Plaintiffs served Defendant with
21 Form Interrogatories, Special Interrogatories, Requests for Admission, Request for Production of
22 Documents, Set One, respectively. Nathan Decl. ¶ 14.

23 **1. Settlement Negotiations**

24 All of Plaintiffs' counsel's pre-filing investigation and discovery during litigation aided
25 Plaintiffs in evaluating this case. Plaintiffs were thus able to enter settlement negotiations armed with
26 the information required to settle this matter for a fair and reasonable amount, having thoroughly
27 assessed the risks and prepared an estimated class-wide damages model. On January 2, 2024, the
28 Parties participated in full-day mediation with the Hon. Carl West (Ret.), a respected mediator of

1 wage and hour class actions. The Parties did not reach an agreement that day, but Judge West
2 continued to assist in settlement negotiations over the following weeks after Plaintiffs propounded
3 discovery, the Parties ultimately reached a global settlement. Nathan Decl. ¶ 15.

4 Furthermore, Plaintiffs' counsel is familiar with wage and hour class actions that arise in the
5 context of the transportation/trucking industry with similar claims alleged herein. Plaintiffs' counsel
6 have been counsel of record and settled cases that involve the same groups of employees, issues, and
7 industry. Here there are 249 employees. Nathan Decl. ¶ 16.

8 Plaintiffs' counsel's experience in litigating and settling similar cases in the
9 transportation/trucking industry provided Plaintiff with a strong foundation to not only appreciate the
10 strengths and the weaknesses of each side's position but also how to value the claims for purposes of
11 a settlement. Nathan Decl. ¶ 17.

12 During the course of the parties' settlement discussions, Defendant was forthcoming with all
13 the necessary information to evaluate the claims in this case. Nathan Decl. ¶ 18.

14 The parties negotiated the terms of the Memorandum of Understanding, followed by the
15 agreed upon terms of the Settlement Agreement², and the notice packet. Nathan Decl. ¶ 19; Ex. 1.
16 These negotiations lasted for more than one month and the parties encountered numerous difficulties
17 in reaching agreement as to the terms of the settlement and the language of the notice packet.
18 Nevertheless, the parties worked together as best they could to finalize the settlement terms, which
19 are memorialized in the Settlement Agreement. A true and correct copy of the Settlement Agreement
20 is attached as Exhibit 1 to Declaration of Reuben D. Nathan, which is being filed concurrently
21 herewith. The notice packet, which consists of a Notice of Class Action Settlement and an Opt-Out
22 Form, is attached as Exhibits 2 and 3, to the Nathan Decl. They are also attached to the Proposed
23 Order as Exs. 1-2. Nathan Decl. ¶ 20.

24 The negotiations were conducted at more than arm's-length and the resulting settlement was
25 the outcome of an informed and educated analysis regarding certification and liability issues and the
26

27 ² Plaintiffs and Defendant have executed a fully enforceable MOU, which sets forth the same terms in the
28 Settlement Agreement. The Parties' unsigned Settlement Agreement is attached to the Nathan Decl. as
"Exhibit 1." Plaintiffs intend to file a Supplemental Nathan Decl. attaching the fully executed Settlement
Agreement within one week of the filing of this Motion.

1 total exposure in relation to the costs and risks affecting Plaintiffs and the Class. Nathan Decl. ¶ 21.
2 This settlement was accomplished after discovery and investigation, with Plaintiffs having invested
3 in extensive factual and legal research, engaged in numerous discussions and exchanges of
4 correspondence, reviewed and analyzed time and payroll records and data, policy documents, and
5 other relevant documents, and conducted extensive negotiations thereafter. It was only after the
6 parties thoroughly assessed the risks that they entered into a well-reasoned settlement. Nathan Decl.
7 ¶ 22.

8 There were risks and uncertainty regarding a number of factors in the case, which gave the
9 parties the perspective and the incentive to thoroughly assess the risks of the case. In addition to
10 XPRESS' financial position, it is possible that Plaintiffs would not be able to certify all of the claims.
11 Plaintiffs believed it would be straightforward to certify the claim for reimbursement of expenses for
12 cell phones, however, the off-the-clock claim would likely prove more challenging to certify since
13 the payroll records and wage statements on their face appear accurate and employees logged out of
14 the system. Further, many of the rest break policies appeared to be facially compliant, which would
15 present challenges, which is supported by complaint meal and rest break policies. Even if Plaintiffs
16 succeeded in certifying some or all of the claims, there was no guarantee that Plaintiffs would win on
17 the merits, and surviving any post-trial motions or appeals would have come at great litigation costs
18 and expenses to the Class. The FMCSA and its pre-emption played a significant role in evaluating
19 the overtime, meal and rest break claims. Nathan Decl. ¶ 23. These factors also support a finding that
20 the settlement is fair and reasonable.

21 Plaintiffs' counsel thoroughly analyzed all of the available information and documents to
22 evaluate the strength of each claim and prepare a class-wide damages analysis, taking into account
23 the strengths and weaknesses of the parties' positions, the risks of litigation, and XPRESS' financial
24 position to arrive at this settlement. Nathan Decl. ¶ 24.

25 **III. SUMMARY OF SETTLEMENT TERMS**

26 **A. The Proposed Settlement Class**

27 The Settlement Class to be conditionally certified shall consist of All current and former
28 employees of Defendant who worked for Defendant in a non-exempt position in California at any

point between November 13, 2021 and January 31, 2024. See Settlement Agreement at ¶ I(C) & I(I) which is attached to the Nathan Decl. as **Ex. 1**.³

B. Relief Provided by the Settlement Agreement

The Gross Settlement Amount is \$375,000.00, which will be used to compensate Class Members, make a \$7,500 payment to the LWDA (75% of the \$10,000 PAGA allocation), and pay the Settlement Administrator’s expenses, the Class Representatives’ service payments and general release payments, and Class Counsel’s attorneys’ fees and costs. Sett. Agmt. Sect. III (A & B).

Defendant shall be separately responsible for the employer share of payroll taxes on the Wage Portion of each Settlement Share distributed to the Participating Class Members. Sett. Agmt. ¶ III(C)(3)(a). Nathan Decl. ¶ 25.

1. Settlement Allocation Formula

The participating Class Members (“Class Participants”) will be paid pursuant to an allocation formula based on the number of workweeks they worked for Defendant during the Class Period and PAGA period. Sett. Agmt. ¶ III(C)(2). Each Class Member’s Individual Settlement Payment will be calculated by: (a) dividing the Net Settlement Amount by the total number of weeks worked for all Participating Class Members that occurred during the Class Period according to Defendant’s records, or as estimated using the Participating Class Members’ dates of employment, and (b) multiplying the result by each individual Participating Class Member’s weeks worked or estimated using dates of employment that occurred during the Class Period. Defendant’s records shall control, but Class Members will have the right to challenge the number of work weeks. Sett. Agmt. ¶ III(C)(2). For tax purposes, the Individual Settlement Payments will be allocated as follows: one-third as wages (subject to wage withholdings, “Wage Portion.” and reported on IRS Form W-2. Defendant shall be separately responsible for the employer share of payroll taxes on the Wage Portion), one-third as interest, and one-third as penalties (interest and penalties payments, “Non-Wage Portion” shall not be subject to wage withholdings and shall be reported on IRS Form 1099). Sett. Agmt. ¶ III(C)(3). Nathan Decl. ¶ 26.

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³ All further references to the Settlement Agreement (“Sett. Agmt.”) will cite to it directly.

1 **2. No Reversion and No Claim Form Required**

2 This is a non-reversionary settlement. Sett. Agmt. ¶III(E)(10). To make the relief provided
3 by the Settlement as accessible to Class Members as possible, the Parties have agreed to eliminate
4 the claims process. Sett. Agmt. ¶. Each Class Member who does not submit a timely and valid opt-
5 out request within 45 days after the Notice Packet is first mailed will be automatically mailed a check
6 for his or her pro rata portion of the Settlement. Sett. Agmt. ¶¶ III(E)(4)(c). Nathan Decl. ¶ 27.

7 **3. Distribution of Uncashed Settlement Checks**

8 The Settlement Agreement provides that Class Members shall have one-hundred eighty (180)
9 calendar days from the postmark date of the checks to deposit or otherwise cash their settlement
10 checks. Sett. Agmt. ¶ III(E)(11). If a Participating Class Member's Settlement Share check is not
11 cashed within 120 days after its last mailing to the Participating Class Member, the Settlement
12 Administrator will also send the affected Participating Class Member a notice informing him or her
13 that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and
14 offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed
15 by the expiration of the 60-day period after this notice, the funds from such uncashed checks will be
16 sent to the State of California's Unclaimed Property Fund. *Id.*

17 **4. Scope of the Release Of Claims**

18 Participating Class Members will release all claims arising from the same set of facts alleged
19 in the SAC or in the LWDA letters, including claims for: failure to provide rest periods and meal
20 periods; failure to pay minimum, regular, and overtime wages; failure to timely pay wages during
21 employment and/or upon termination; unreimbursed business expenses; improperly itemized wage
22 statements; unfair competition; and violations of the Private Attorneys General Act. Sett. Agmt. ¶¶
23 III(F).

24 The time period covered by the release is November 13, 2021 through January 31, 2024.
25 Sett. Agmt. ¶¶ I(I) and III(F)(1). The released parties are defined as:

26 Defendant and any of its past or present affiliated and related entities
27 and all of its and their past or present partners, parents, subsidiaries,
28 trustees, affiliates, divisions, insurers, re-insurers, successors and
 assigns and any of its and their past or present directors, officers,
 owners, principals, attorneys, trustees, heirs, administrators, agents,

representatives, employees or assigns (whether acting as agents for any other Released Parties or in their individual capacities), any employment benefit plan sponsored by Defendant, and such plans' administrators, fiduciaries, trustees, insurers and re- insurers.

Sett. Agmt. ¶ I(Z).

The release also includes all claims for PAGA penalties that were alleged or could have been alleged by Plaintiffs based on the facts alleged in the SAC. Sett. Agmt. ¶ III(F)(1).

C. Requested Attorneys' Fees and Costs and Proposed Service Payments to the Class Representatives and Payments to Plaintiffs in exchange for 1542 Release

The Settlement Agreement allows Class Counsel to apply for an award of attorneys' fees of not more than 40% of the Total Settlement Amount (\$150,000) and litigation costs not to exceed \$20,000. Sett. Agmt. ¶ III(B)(2). Plaintiffs will apply to the Court for a service payment of \$2,500 each to compensate Plaintiffs for their time and service to the class. Plaintiffs will also apply to the Court to receive payments of \$7,500 each in exchange for a 1542 release. Sett. Agmt. ¶ III(B)(1). These amounts are preliminarily reasonable and justified based on the work performed and the costs incurred by Plaintiffs and Plaintiffs' counsel in order to obtain a successful result on behalf of the Class Members. Nathan Decl. ¶ 28. These amounts also serve as consideration for the general release to which the named Plaintiffs have agreed. *Id.* To provide further justification for awarding these amounts, Plaintiffs will apply for award of Class Representatives Service Payments and 1542 release payments to Plaintiffs, Settlement Administrator's Expenses, and Class Counsel's Attorneys' Fees and Costs to be heard at the Motion for Final Approval. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, which are presently \$150,000 and \$20,000, respectively, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Sett. Agmt. ¶ III(B)(2).

D. Settlement Administration

As explained further in Section IV.B.7 below, the Settlement Agreement provides for Class Members to receive direct notice of the Settlement by mail. *Id.* ¶ III(E)(3). The notice administration plan will ensure that substantially all of the Class Members will receive notice of the Settlement and will be adequately apprised of and able to exercise their rights and options thereunder. Phoenix Class Administration Solutions ("Phoenix"), an experienced third-party claims administrator, will handle

1 all aspects of the notice process and settlement administration. Phoenix’s CV is marked and attached
2 as Exhibit 4 to the Nathan Decl. See Nathan Decl. ¶ 29. Class Counsel will also be available to the
3 Class Members to answer their questions and encourage participation.

4 **IV. ARGUMENT**

5 **A. The Settlement Class Should Be Provisionally Certified**

6 During the preliminary approval analysis, the Court determines whether certification of a
7 provisional settlement class is appropriate and whether the settlement is fair. *Carlin v. DairyAmerica,*
8 *Inc.*, 328 F.R.D. 393, 398-399 (E.D. Cal. 2018) (citing *In re Bluetooth Headset Prods. Liab. Litig.*,
9 654 F.3d 935, 946 (9th Cir. 2011)). Pursuant to Federal Rule of Civil Procedure 23(a), the plaintiff
10 must show that the requirements of numerosity, commonality, typicality, and adequacy of
11 representation are met. The settlement class must also meet one of the requirements of Rule 23(b)
12 and Plaintiffs seek certification under Rule 23(b)(3), which requires that common questions of law
13 or fact predominate over individual questions and that class treatment is a superior method of
14 resolving the controversy.

15 California adopts Federal Rule 23 in terms of the criteria that must be met for class
16 certification. Each of the factors are discussed below. See *Sav-on Drug Stores v. Superior Court*, 34
17 Cal.4th 319, 326 (2004).

18 **1. The Settlement Class Is Sufficiently Numerous**

19 The first requirement of Rule 23(a) is that the class be so numerous that joinder of all members
20 would be “impracticable.” See Fed. R. Civ. P. 23(a)(1). Numerosity is satisfied with as few as 40
21 class members. See *Welling v. Allexy*, 155 F.R.D. 654, 656 (N.D. Cal. 1994). Here, numerosity is
22 satisfied because there are approximately 249 class members – all of whom are identifiable from
23 Defendants’ records. Nathan Decl., ¶ 30. See, e.g., *Rose v. City of Hayward* (1981) 126 Cal.App.3d
24 926, 934 (class of 42 is sufficiently numerous). “[T]he purpose of the ascertainability requirement is
25 to ensure notice to potential class members.” *Ghazaryan v. Diva Limousine, Ltd.*, (2008) 169
26 Cal.App.4th 1524, 1533. A class is ascertainable when it is precise, objective, and can be determined
27 from defendants’ public records, or other existing records. *Wilner v. Sunset Life* (2000) 78
28 Cal.App.4th 952, 960. “The class is ascertainable if it identifies a group of unnamed plaintiffs by

1 describing a set of common characteristics sufficient to allow a member of that group to identify
2 himself as having a right to recover based on the description.” *Estrada v. FedEx Ground* (2007) 154
3 Cal.App.4th 1, 14.

4 **2. There Are Common Issues of Law and Fact**

5 Rule 23(a) also requires “questions of law or fact common to the class.” Fed. R. Civ. P.
6 23(a)(2). The commonality requirement is permissively construed by the Ninth Circuit such that the
7 “existence of shared legal issues with divergent factual predicates is sufficient, as is a common core
8 of salient facts coupled with disparate legal remedies within the class.” *Hanlon v. Chrysler Corp.*,
9 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiffs meet the criteria of Rule 23(a)(2) because the Class
10 Members’ claims turn upon answers to overarching common questions regarding Defendants’
11 policies and procedures that are capable of classwide resolution for settlement purposes.

12 Here, the common questions include whether Plaintiffs and the class members: (1) were
13 suffered and/or permitted to work time for which they were not compensated; (2) were properly paid
14 overtime for all overtime hours worked; (3) were provided with a duty-free rest break of at least 10
15 minutes for every 4 hours of work or major fraction thereof; (4) were provided with a duty-free meal
16 break of at least 30 minutes for every 5 hours of work; (5) were reimbursed for all expenses incurred
17 while performing work for Defendant; (6) were provided with accurate, itemized wage statements;
18 (7) were paid all wages due and owed to them upon separation of employment; and (8) whether
19 Defendant engaged in unlawful business practices. These questions are based on alleged policies and
20 practices that apply to the entire class and discrete subclasses. This is sufficient to satisfy the
21 commonality requirement for settlement purposes. *See Stonehocker v. Kindred Healthcare Operating*
22 *LLC*, 2021 WL 1643226 (N.D. Cal. Apr. 27, 2021) (granting final approval of a settlement involving
23 allegations of off-the-clock work and failure to provide meal and rest breaks).

24 **3. Plaintiffs’ Claims Are Typical of the Settlement Class**

25 Under Rule 23(a)(3), Plaintiffs must establish that the “claims or defense of the representative
26 parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This is a permissive
27 standard that is met so long as the representative claims “are reasonably coextensive with those of
28 absent class members.” *Hanlon*, 150 F.3d at 1020. The typicality requirement is met if the claims of

1 the representative plaintiff are typical of the claims of the class. (*See, Fireside Bank v. Superior Court*
2 (2007) 40 Cal. 4th 1069, 1090. Class representatives are not required to have identical interests with
3 the class members. The only requirements are that common questions of law and fact predominate
4 and that representatives be similarly situated. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987)
5 191 Cal. App. 3d 1341, 1347.

6 Here, the named Plaintiffs seeking to represent the proposed Settlement Class satisfies the
7 typicality requirement because they have held the same positions and assert the same types of injury
8 arising from the same conduct by Defendant as Plaintiffs.

9 **4. Plaintiffs and Their Counsel Will Adequately Represent the Settlement Class**

10 Rule 23 also requires that "the representative parties fairly and adequately protect the interests
11 of the class." Fed. R. Civ. P. 23(a)(4). To satisfy this element, Plaintiffs must establish that: (1) the
12 class representatives do not have a conflict of interest; and (2) class counsel will adequately represent
13 the interests of the class. *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir.
14 1978). "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct
15 the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class."
16 *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-451 (1976). "[A]n essential concomitant of
17 adequate representation is that the party's attorney be qualified, experienced and generally able to
18 conduct the proposed litigation." *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 478-479.

19 Plaintiffs have no conflict of interest with the Class Members. Plaintiffs performed similar
20 work and were subject to the same policies and practices as the Class Members. Plaintiffs' claims are
21 identical to the claims of the other Class Members and arise from the same course of conduct by
22 Defendant. Plaintiffs have embraced their responsibilities as the class representatives by actively
23 participating in this case, providing documents, identifying potential witnesses, providing valuable
24 information regarding the policies and practices at issue in this case and Defendant's business
25 structure, engaging in the settlement process, and consulting with counsel throughout the litigation.
26 Nathan Decl. ¶ 31. Plaintiffs have devoted considerable time to this litigation and are prepared to
27 continue to do so, demonstrating their commitment to achieving the best possible result for the class.⁴

28 ⁴ Further details regarding Plaintiffs' work on the case will be presented in a declaration with the motion
for final approval.

1 *Id.* Nathan Decl. ¶ 64. Further, Plaintiffs are represented by qualified and competent counsel, who
2 have the experience and resources necessary to vigorously pursue this action. Nathan Decl. ¶¶ 66-87
3 & Kowalski Decl. ¶¶ 4-8. Plaintiffs’ attorneys have certified many class actions in state and federal
4 court, for both litigation and settlement purposes, and have recovered many millions of dollars on
5 behalf of class members.

6 **5. Common Issues Predominate Over Individualized Issues**

7 Rule 23(b)(3) certification is proper when common questions “predominate over any
8 questions affecting only individual members” and class resolution is “superior to other available
9 methods for the fair and efficient resolution of the controversy.” Fed. R. Civ. P. 23(b)(3). Both Rule
10 23(b)(3)’s predominance and superiority requirements are satisfied for purposes of certifying the
11 proposed Settlement Class. “The Rule 23(b)(3) predominance inquiry tests whether proposed class
12 [is] sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods. Inc. v. Windsor*,
13 521 U.S. 591, 623 (1997). As *Brinker v. Superior Court* 53 Cal. 4th 1004 (2012) explained, the core
14 test for certification is whether “the issues which may be jointly tried, when compared with those
15 requiring separate adjudication, are so numerous or substantial that the maintenance of a class action
16 would be advantageous to the judicial process and to the litigants.” 53 Cal. 4th at 1021 (quoting
17 *Collins v. Rocha*, 7 Cal. 3d 232, 238 (1972)). This motion confirms that Plaintiffs satisfy this test.

18 This inquiry tests whether the “proposed classes are sufficiently cohesive to warrant
19 adjudication by representation.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016)
20 (quotations omitted). An individual question is defined as “one where members of a proposed class
21 will need to present evidence that varies from member to member.” *Id.* A common question, on the
22 other hand, is “one where the same evidence will suffice for each member to make prima facie
23 showing [or] the issue is susceptible to generalized, class-wide proof.” *Id.*

24 Here, the legality of the challenged policies and practices involve common questions that can
25 be decided with common proof and will generate an answer common to the entire class. The common
26 questions include: (1) whether Plaintiffs and Class Members suffered and/or permitted to work time
27 for which they were not compensated; (2) whether Plaintiffs and Class Members were properly paid
28 overtime for all overtime hours worked; (3) whether Plaintiffs and Class Members were provided

1 with a duty-free rest break of at least 10 minutes for every 4 hours of work or major fraction thereof;
2 (4) whether Plaintiffs and Class Members were provided with a duty-free meal break of at least 30
3 minutes for every 5 hours of work; (5) whether Plaintiffs and Class Members were reimbursed for all
4 expenses incurred while performing work for Defendant; (6) whether Plaintiffs and Class Members
5 were provided with accurate, itemized wage statements; (7) whether Plaintiffs and Class Members
6 were paid all wages due and owed to them upon separation of employment; and (8) whether
7 Defendant engaged in unlawful business practices.

8 If the case were to be litigated, the common proof would include, among other things,
9 employee handbooks, standalone policy documents, performance reviews that reflect productivity
10 rules, and Plaintiffs' and the Class Members' time and payroll records, as well as documents
11 reflecting when employees used their personal cell phones while discharging their duties for
12 Defendant. The Class Members would have to individually prove their damages, but "damage
13 calculations alone cannot defeat certification." *Yokoyama v. Midland Nat'l Life Ins. Co.*, 594 F.3d
14 1087, 1094 (9th Cir. 2010); *Leyva v. Medline Indus., Inc.*, 716 F.3d 510, 513 (9th Cir. 2013)
15 ("damages determinations are individual in nearly all wage-and-hour class actions").

16 **6. A Class Action Is Superior to Individual Actions**

17 Rule 23(b)(3)'s final requirement is "that the class action be superior to other methods of
18 adjudication." This requirement is satisfied because there is no indication that Class Members seek
19 to individually control their cases, that individual litigation is already pending in other forums, or that
20 this particular forum is undesirable for any reason. Fed. R. Civ. P. 23(b)(3)(A)-(D). In addition, the
21 alternative of hundreds of individual actions "is not realistic." *See Wren v. RGIS Inventory Specialists*,
22 256 F.R.D. 180, 210 (N.D. Cal. 2009). Accordingly, certification of a settlement class is superior to
23 any other method of resolving this matter, since it will promote economy, expediency, and efficiency.
24 California has a strong "public policy that encourages the use of the class action device." *Sav-On*
25 *Drug, supra*, 34 Cal. 4th at 340. There, the Supreme Court counseled that in circumstances such as
26 those in the case at bar, class treatment is superior to individual trials:

27 Many of the issues likely to be most vigorously contested in this dispute, as noted,
28 are common ones. Absent class treatment, each individual plaintiff would present
in separate, duplicative proceedings the same or essentially the same arguments
and evidence, including....The result would be a multiplicity of trials conducted

1 at enormous expense to both the judicial system and the litigants. It would be
2 neither efficient nor fair to anyone...to force multiple trials to hear the same
evidence and decide the same issues.

3 *Id.* (internal citations omitted). The superiority analysis also includes considerations of whether
4 individual members are likely to come forward and claim a part of the recovery and whether a group
5 action will serve to deter future wrongdoing. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 445.

6 There is no better evidence that the case should proceed on a class-wide basis than the fact
7 that if absent class members were to bring their claim individually, they would each rely on the
8 same evidence of Defendant's standard policy of non-payment of wages for all hours worked,
9 failure to pay overtime, failure to reimburse for all business expenses, failure to pay all wages upon
10 separation, and failure to provide meal and rest breaks pursuant to California law.

11 Although Defendant disagrees that the proposed class would satisfy the requirements for a
12 litigated class action, Defendant does not object to certification of the class for purposes of this
13 settlement. Sett. Agmt. ¶ II(H) & III(E)(2)(a).

14 **7. The Court Should Appoint Plaintiffs as the Class Representatives and**
15 **Plaintiffs' Counsel as Class Counsel**

16 Because the commonality, typicality, and adequacy requirements of Rule 23(a) are met,
17 Plaintiffs should be appointed as the class representatives. Plaintiffs' counsel should also be
18 appointed to represent the settlement class. The factors that apply in deciding whether to appoint class
19 counsel are: (1) the work counsel has done in identifying or investigating potential claims in the
20 action; (2) counsel's experience in handling class actions, other complex litigation, and the types of
21 claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources
22 that counsel will commit to representing the class. Fed. R. Civ. P. 23(g) (1)(A).

23 As set forth herein, Plaintiffs' counsel conducted a thorough investigation of the claims at
24 issue before filing the complaint and during the year of litigation leading up to this settlement.
25 Plaintiffs' counsel has extensive experience litigating wage-and-hour class actions and representative
26 actions, is well-versed in the applicable law, and has ample resources to dedicate to the case. Nathan
27 Decl. ¶¶ 15-17, 22, 66-87; Kowalski Decl. ¶¶ 4-8, 12-13. The firms representing Plaintiffs have
28 vigorously represented the Class Members' interests, and will continue to do so.

1 **B. The Settlement Should Be Preliminarily Approved**

2 A class action settlement requires court approval upon a finding that the settlement is fair,
3 reasonable, and adequate. Fed. R. Civ. P. 23(e); *Hanlon*, 150 F.3d at 1026. There are two sources of
4 factors for the fairness analysis: case law, and Federal Rule of Civil Procedure 23(e). The fairness
5 factors established by case law provide that a settlement should be preliminarily approved if it (1)
6 appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious
7 deficiencies; (3) does not improperly grant preferential treatment to the class representatives or
8 segments of the class; and (4) falls within the range of possible approval. *In re Tableware Antitrust*
9 *Litig.*, 484 F. Supp. 2d 1078, 1079-1080 (N.D. Cal. 2007).

10 The relevant factors are under Rule 23(e)(2) are whether: (1) the class representatives and
11 class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length;
12 (3) the relief provided for the class is adequate, taking into account (a) the costs, risks, and delay of
13 trial and appeal; (b) the effectiveness of any proposed method of distributing relief to the class,
14 including the method of processing class members' claims; (c) the terms of any proposed award of
15 attorney's fees, including the timing of the payment; and (d) any agreement required to be identified
16 under Rule 23(e)(3)⁵; and (4) the proposal treats class members equitably relative to each other.

17 The relative degree of importance of a particular factor depends on "the unique facts and
18 circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n of City*
19 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). In applying these factors, the Court
20 should also be guided by the "strong judicial policy" that favors the settlement of class actions." *Class*
21 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Hanlon*, 150 F.3d at 1027 (a
22 settlement is a "private consensual decision of the parties" and the approval analysis is limited to
23 considering whether the settlement is a product of collusion and is fair as a whole).

24 **1. The Settlement Was Negotiated at Arm's Length by Experienced Counsel**

25 The Settlement is the product of protracted arm's-length negotiation by mediating with (Ret.)
26 Carl. West. Class Counsel advocated vigorously on behalf of the Class throughout the negotiations
27 in order to negotiate a settlement that is in the best interest of the Class Members and provides
28

⁵ There are no agreements to disclose under this rule.

1 adequate class-wide relief. Nathan Decl. ¶¶ 15, 21-24. The vigorous negotiations between the Parties
2 resulted in a reasonable compromise that is the product of genuine give and take justified by the facts
3 of this case. Plaintiffs' counsel requested certain information from XPRESS in order for the parties
4 to engage in mediation and have any meaningful discussion towards settlement. Specifically,
5 Plaintiffs' counsel sought and received information about the number of employees, the number of
6 pay periods, the number of workweeks, dates of employment, the average pay rate, and any meal and
7 rest break premiums paid. Defendant provided information based on a sampling of information for
8 72 class members. Defendant also provided Plaintiffs with hundreds of pages of document production
9 in order to prepare for mediation. Plaintiffs are represented by highly experienced class action
10 litigators, who believe that the Settlement is an excellent result for the Class Members.

11 Further, there are no "subtle signs of collusion." *In re Bluetooth Headset Prods. Liab. Litig.*,
12 654 F.3d 935, 947 (9th Cir. 2011). The settlement is non-reversionary. The Settlement provides for
13 an attorneys' fee award of up to 40% of the Gross Settlement Amount, which is in line with the market
14 rate. *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19. *Lealao* stands for the
15 proposition that court-awarded attorney's fees should approximate what counsel could get on the free
16 market for the same services. *Lealao* stands for the proposition that court-awarded attorney's fees
17 should approximate what counsel could get on the free market for the same services. The Settlement
18 is an outstanding result for the Class. Similarly, the request for Plaintiffs' enhancement awards will
19 be supported by evidence of the work they have done and the risks they have undertaken.

20 **2. The Settlement Provides Excellent Relief for the Class**

21 The Settlement provides a significant monetary relief to the Class Members to compensate
22 them for the alleged wage-and-hour violations at issue in this case, especially in light of the economic
23 risks and downturn in Defendant's industry, the impact of federal law on the overtime, meal, and rest
24 break issues, and the settlement value in relation to the settlement approval obtained in *Buckner v.*
25 *Xpress Global, et al.*, Case No. RG2000806657 that resulted in \$500,000 settlement but involved the
26 same causes of action but for a significantly more workweeks in comparison to the 11,837 workweeks
27 at stake in this case. Class Counsel estimates the Gross Settlement Amount to represents
28 approximately 62.5% of Defendant's estimated realistic exposure of \$599,703.73, which is not only

1 within the range of possible approval but is an excellent result given Defendant's financial position.
2 Nathan Decl. ¶¶ 32, 41-59, 60.

3 The proposed settlement provides a total non-reversionary settlement amount of \$375,000 to
4 249 Class Members who worked a total of approximately 11,837 workweeks (2,722 months). The
5 gross value to be paid to the Class Members is approximately \$31.68 per workweek per class member
6 (\$375,000.00 divided by 11,837 workweeks). The settlement represents more than 62.5% of the
7 total realistic exposure if Plaintiffs were successful on all class claims for every week worked and
8 provides the settlement class with an average payment of approximately \$1,562.50 gross per class
9 member for the non-exempt group before deductions for fees, litigation costs and costs of
10 administration. Nathan Decl. ¶ 33. Further, .02666667% of the Gross Settlement Amount (\$10,000)
11 was allocated to the PAGA claim. Sett. Agmt. ¶ III(B)(3). As required by statute, 75% (\$7,500) will
12 be paid to the LWDA. The remaining 25% (\$2,500) will be distributed to the Class Members. The
13 LWDA received notice of this settlement and this motion. *Id.* Nathan Decl. ¶ 34 and Ex. 5.

14 Regarding the claims for failure to receive all wages owed, meal and rest breaks,
15 reimbursement, wage statement violations, and related relief, the class also consists of 249
16 employees. The class worked a total of 2,722 months (11,837 workweeks). The gross value (without
17 reimbursement) is approximately \$31.68 per workweek per class member including the
18 reimbursement claim. The net value to each class member is approximately \$719.27. The net value
19 of the settlement per workweek for the non-exempt class members is estimated to be approximately
20 \$13.73 (\$375,000 - \$212,375 ÷ 11,837 workweeks). Nathan Decl. ¶ 36, 41-59, 60.

21 Further, \$10,000.00 of the Total Settlement Amount was allocated to the PAGA claim. Sett.
22 Agmt. § D.5. As required by statute, 75% (\$7,500) will be paid to the LWDA. The remaining 25%
23 (\$2,500) will be distributed to approximately 94 PAGA Employees. Thus, the PAGA payments are
24 estimated to be approximately \$26.59 on average (\$2,500 ÷ 94). Nathan Decl. ¶ 35.

25 This represents an excellent recovery for the Class Members, particularly considering the risks
26 of further litigation and the economic difficulties facing Defendant and the transportation/trucking
27 industry. There is no guarantee that Plaintiffs could certify the off the clock, meal or rest break claims
28 and they are subject to federal pre-emption pursuant to Federal Motor Carrier Safety Act. Kowalski

Decl. ¶¶ 4-11 To the extent the claim applies, Plaintiffs could potentially compare employees' time/phone records against data showing when they logged into and out of the computer system to determine how much unpaid time may have occurred during the process of clocking in and out. Kowalski Decl. ¶¶ 8-21 There is a chance that the amounts of time could be small and/or infrequent. To the extent Plaintiff alleged that employees were required or pressured to work off the clock to complete their work, this would likely be difficult to prove like any off the clock claim. With regard to the meal/rest breaks, the written policies appeared to be compliant, which would make certification significantly more challenging. The pay data indicates that no meal/rest break premiums were paid. Plaintiff believes that the claims for wage statement penalties and PAGA penalties are strong to the extent they are derivative of the wage claims, but reimbursement of expenses are not required to be included on the wage statement. Additionally, Defendants could succeed in arguing that they acted in good faith and not wilfully. Nathan Decl. ¶ 36, 41-59, 60-65.

Moreover, litigating the case through certification, summary judgment, and trial would have been expensive and time-consuming, with the risk that: 1) Defendant could go bankrupt, 2) Plaintiffs could lose at each step of the way and recover nothing, barring a successful appeal, and 3) Class Members executed an arbitration agreement to litigate their non-PAGA claims. For these reasons, the settlement value is fair, reasonable, and adequate.

3. The Settlement Is Non-Reversionary and Checks Will Be Mailed Automatically

The method for distributing relief to the Class Members is simple and effective. The Class Members have been identified from Defendant's employment records and will be mailed automatic payments unless they opt out. No part of the settlement will revert to Defendant.

4. There Is No Unfair Preferential Treatment of Class Members

The Settlement does not give preferential treatment to any Class Members. The settlement provides for the funds to be allocated to each participating Class Member proportionally based on the number of weeks they worked for Defendant, as shown by Defendant's records. Sett. Agmt. ¶ III(C)(2). The settlement class is cohesive because it consists of employees subject to the same relevant wage-and-hour policies, including policies regarding work schedules and hours worked, overtime, rest breaks and meal breaks, and reimbursement policies. Nathan Decl. ¶ 37.

Further, the proposed incentive award to Plaintiffs is within the range approved by courts in this district. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-267 (N.D. Cal. 2015) (noting that incentive awards compensate wage-and-hour plaintiffs for a “significant reputational risk” and higher awards are appropriate when the average class member payment is high); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645 at *5 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000 each to two plaintiffs in a \$1,725,000 settlement). The requested award also accounts for the risk that Plaintiffs took on by filing this lawsuit while continuing to work for Defendant and with the possibility of receiving backlash from other transportation/trucking company.

5. The Proposed Attorneys’ Fee Award is Preliminarily Appropriate

Pursuant to the Settlement Agreement, Plaintiffs’ counsel will seek attorneys’ fees not to exceed \$150,000 (40% of the Gross Settlement Amount) and actual litigation costs not to exceed \$20,000. Sett. Agmt. ¶ III(B)(2). Class counsel appreciates that this Court will utilize the period of time before the hearing on final approval to consider any comments from Class Members and inform itself of all aspects of the settlement. Further, at the final approval stage, this Court will rule upon the reasonableness of any attorney's fees, the class representatives’ enhancement requests and general release payments, and repayment of costs advanced by Plaintiffs’ counsel. In preparation for final approval, Plaintiffs will provide this Court with further briefing pertaining to those requests. Nathan Decl. ¶ 61-64

However, at this preliminary stage the requested fee award is less than Class Counsels’ lodestar and in line with the market rate. *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19.

The awarded fees and costs will be paid after the settlement has been finally approved and the deadline to file appeals has passed, assuming that no appeals are filed. To the extent the Court awards less than the requested amount of fees and costs, the difference will be distributed *pro rata* to the Class Members. Sett. Agmt. ¶ III(B)(2).

6. The Release Is Narrowly Tailored

As set forth above in Section III.B.4, the release is tailored to track the definition of the Class. The Class Members will release all claims arising from the same set of facts alleged in the operative

1 SAC and in Plaintiffs' LWDA letters. Sett. Agmt. ¶ III(F). The release period for class claims is from
2 November 13, 2021, through January 31, 2024. Sett Agmt. ¶ I(I). Nathan Decl. ¶ 38.

3 **7. The Proposed Class Notice, Notice Plan, and Settlement Administrator Are**
4 **Sufficient**

5 Under Rule 23(e), the Court must “direct notice in a reasonable manner to all Class Members
6 who would be bound by a proposed settlement.” Fed. R. Civ. P. 23(e) (1)(B). The notice provided to
7 members of a class certified under Rule 23(b)(3) must be the “best notice practicable under the
8 circumstances.” Fed. R. Civ. P. 23(c)(2)(B). The notice is satisfactory “if it generally describes the
9 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to
10 come forward and be heard.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 962-963 (9th Cir.
11 2009) (quotations omitted). Reasonable efforts must be made to reach all class members, but it is not
12 required that each class member actually receive notice. Fed. R. Civ. P. 23(c)(2)(B) (requiring
13 “individual notice to all members who can be identified through reasonable effort”); *Silber v. Mabon*,
14 18 F.3d 1449, 1454 (9th Cir. 1994) (under Rule 23, the standard is “best practicable” notice, not
15 “actually received” notice). The notice is easy for the Class Members to understand and includes
16 class counsel’s contact information; the address for the settlement administrator’s website with links
17 to the settlement motions and other important documents; and information about how to access the
18 case docket and when the final approval hearing will be held. The notice also includes information
19 about how to opt out. Fed. R. Civ. P. 23(c)(2)(B).

20 The Class Members have already been identified from Defendant’s records and the Notice
21 Packet will be mailed to them using the last known mailing address in Defendants’ records. Sett.
22 Agmt. ¶ III(E)(3). Prior to mailing, the Settlement Administrator will perform a search in the National
23 Change of Address database to update the addresses. Sett. Agmt. ¶ III(D) and III(E)(3)(b). If a Class
24 Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly,
25 and not later than fourteen (14) days from receipt of the returned packet, search for a more current
26 address for the Class Member and re-mail the Class Notice Packet to the Class Member. Sett. Agmt.
27 ¶ III(E)(3)(c). There will be a 45-day period to opt out of and object to the settlement. Sett.
28 Agmt.III(E)(4)(c). Nathan Decl. ¶ 39.

1 The Notice Packet (also attached to the Proposed Order) will describe the nature of the action;
2 the definition of the settlement class; the total settlement amount and the proposed deductions for the
3 payment to the LWDA, class representative service award, attorneys' fees and costs, and settlement
4 administration costs; the scope of the release; the formula for calculating individual settlement
5 payments and how to challenge the number of workweeks and pay periods used to calculate the
6 payments; how to participate in, object to, and opt out of the Settlement, and the deadlines for doing
7 so; that Class Members may enter an appearance through an attorney if desired; the binding effect of
8 the judgment on Class Members; information about when and where the final approval hearing will
9 be held, and how to check if the hearing date has changed; and how to obtain further information
10 about the lawsuit and the Settlement. The Notice Packet also includes Class Counsel's contact
11 information and the address for the settlement administration website. *Id.* The notice will be sent in
12 English only. A true and correct copy of the Class Notice is attached as Exhibit 2 to the Nathan Decl.
13 The parties are informed and believe that the Class Members in this case are proficient in English, so
14 that a translation is not necessary.

15 In order to request exclusion from the Settlement, Class Members only need to fill out the
16 Opt-Out form included in the Notice Packet. A true and correct copy of the Opt-Out Form is attached
17 as Exhibit 3 to the Nathan Decl. This form includes a brief statement that the signer is a Class
18 Member, wishes to be excluded from the Settlement, and understands that he or she will receive no
19 money from the Settlement by opting out. The Class Member will sign and date the form and fill in
20 their mailing address and telephone number so they can be properly identified. *Id.* No other
21 information is required. The Notice Packet also states that Class Members may file an objection with
22 the Court with instructions and the deadline for doing so. Written objections must state the ground
23 for the objection, and Class Members will also be permitted to make oral objections if they appear at
24 the final approval hearing. Nathan Decl. ¶ 40.

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V. PROPOSED IMPLEMENTATION SCHEDULE

Plaintiff proposes the following implementation schedule for further proceedings:

a.	Deadline for Defendants to Submit Class List and Data to Settlement Administrator	Fourteen (14) calendar days after the Court enters an Order Granting Preliminary Approval of the Settlement.
b.	Deadline for Settlement Administrator to Mail the Notice Packet to Class Members	Seven (7) calendar days after Defendants provide the Settlement Administrator with the Class List and Data
c.	Deadline for Class Members to Submit Opt-Out Forms or Objections to Settlement	Forty-five (45) calendar days after mailing of Notice Packets to Class Members
e.	Deadline for Class Counsel to file (1) Motion for Final Approval of Class Action Settlement and (2) Motion for Award of Class Representative Enhancement Award, Claims Administrator's Expenses and Attorneys' Fees and Costs	_____, 2024
f.	Hearing on: • Motion for Final Approval of Class Action Settlement; • Motion for Award of Class Representative Enhancement Award, Settlement Administrator's Expenses and Attorneys' Fees and Costs	_____, 2024 at _____ a.m.

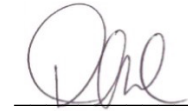
VI. CONCLUSION

The parties have successfully negotiated a settlement of claims that almost certainly would never have been brought, much less successfully so, but for the use of a class action as a procedural device. The efficient and fair resolution of this case was made possible by the combined efforts of dedicated and informed Class Representatives and experienced Plaintiffs' counsel and Defendant's counsel, who were able to realistically assess the costs and risks of continued protracted litigation. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the proposed settlement, certify the Settlement Class, appoint Plaintiffs as the Class Representatives, appoint

1 Plaintiffs' counsel as Class Counsel, appoint the Settlement Administrator, and approve the Notice
2 Packet and proposed implementation schedule.

3
4 Dated: June 4, 2024

Respectfully Submitted,
NATHAN & ASSOCIATES, APC

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7 _____
8 Reuben D. Nathan
9 Attorneys for Plaintiffs
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Court Reservation Receipt

Reservation

Reservation ID:
241640102506

Status:
RESERVED

Reservation Type:
Motion re: (Motion for Preliminary Approval of Class
Action Settlement)

Number of Motions:
1

Case Number:
23CV034375

Case Title:
VASQUEZ, et al. vs XPRESS GLOBAL SYSTEMS LLC

Filing Party:
Anthony Vasquez (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 23

Date/Time:
June 27th 2024, 10:00AM

Confirmation Code:
CR-5MPPMDKDERF5AB34T

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX6905

Authorization:
035512

Payment Date:
2024-03-28

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