

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

Attorneys for Plaintiff FRANCISCO RAMIREZ, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

FRANCISCO RAMIREZ on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

MESSER LLC; and DOES 1-100,

Defendants.

Case No. CV-23-002006

**PLAINTIFF FRANCISCO RAMIREZ'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, AND SETTING OF FINAL
APPROVAL HEARING DATE**

Date: December 6, 2024

Time: 8:30 a.m.

Judge: Hon. John Freeland

Dept.: 23

Complaint Filed: April 14, 2023

Trial Date: None Set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION6

II. BACKGROUND7

III. INVESTIGATION/LITIGATION HISTORY8

 a. Discovery and Investigation8

 b. The Parties Agreed to Attend Mediation.....8

 c. The Parties’ Staunchly Conflicting Positions9

 i. Unpaid Wages9

 ii. Wage Statements and Waiting Time Penalties10

 iii. PAGA Penalties11

IV. TERMS OF THE PROPOSED SETTLEMENT12

 a. Deductions from the Settlement12

 b. Calculation of Settlement Payments to Class Members13

 c. Notice to the Class.....14

 i. Requests for Exclusion15

 ii. Objections to the Settlement.....15

 iii. Disputes16

 iv. Returned Notices.....16

 d. Distribution of Funds.....17

 e. Release of Claims18

V. ARGUMENT19

 a. Class Action Settlements Are Subject to Court Review and Approval Under the
California Rules of Court19

 b. The Settlement is Fair, Reasonable, and Adequate20

 i. The Settlement was Reached as a Result of Arm’s-Length Negotiations20

 ii. The Settlement is the Result of Thorough Investigation and Discovery20

 iii. Counsel for Both Parties are Experienced in Similar Litigation21

1	iv. The Proposed Settlement is a Reasonable Compromise of Claims.....	21
2	1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case	
3	and the Risks and Costs of Further Litigation	22
4	2. Potential Exposure on Plaintiff's Claims	23
5	3. The Settlement Amount of \$450,000 is Reasonable	26
6	c. Provisional Certification Should be Granted.....	27
7	d. Notice to the Class Complies with California Rule of Court 3.769(f)	27
8	VI. CONCLUSION	28
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2</i> (2006) 144 Cal. App. 4th 121	22
<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	9
<i>Avila v. Cold Spring Granite Co.</i> (E.D. Cal. Jan. 12, 2018) 2018 U.S. Dist. LEXIS 6142 *1	11, 24
<i>Bono Enterprises, Inc. v. Bradshaw</i> (1995) 32 Cal. App. 4th 968	8
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610	20
<i>Dunbar v. Albertson’s Inc.</i> (2006) 141 Cal. App. 4th 1422	22
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	19, 20, 26
<i>Glob. Minerals & Metals Corp. v. Superior Court</i> (2013) 113 Cal.App.4th 836	26
<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	18
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011, 1019	26
<i>Harris v. Superior Court</i> (2007) 154 Cal. App. 4th 164	22
<i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F. 2d 167	19
<i>In re Omnivision Technologies, Inc.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616	25
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i> (1981) 452 U.S. 905	19
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	20, 21
<i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308	9, 23
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	20, 21
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2024) 15 Cal.5th 1056	9, 23
<i>Plotnik v. Meihaus</i> (2014) 208 Cal.App.4th 1590	11
<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117	25
<i>Sav-On v. Superior Court</i> (2004) 34 Cal.4th 319	21
<i>Tech-Bilt v. Woodward-Clyde & Associates</i> (1985) 38 Cal.3d 488	21
<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	18
<i>Walsh v. IKON Solutions, Inc.</i> (2007) 148 Cal. App. 4th 1440	22

1	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 2	25, 26
---	---	--------

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Plaintiff Francisco Ramirez (hereinafter “Plaintiff”) on behalf of himself and the
3 approximately 132-member putative class, respectfully requests that this Court preliminarily
4 approve the Joint Stipulation and Settlement Agreement (hereinafter “Agreement”¹) entered into
5 between Plaintiff and Defendant Messer LLC (hereinafter “Defendant” or “Messer”) (hereinafter
6 Plaintiff and Defendant are collectively referred to as the “Parties”). The Parties’ Agreement seeks
7 to resolve various wage and hour claims raised against Defendant in this matter in exchange for a
8 non-reversionary \$450,000 Gross Settlement Amount. The proposed Class is comprised of all
9 persons employed by Defendant in California as a non-exempt driver from April 14, 2019 through
10 August 15, 2024.²

11 It is requested that the Court grant preliminary approval as, when analyzing the strengths
12 and vulnerabilities of the claims and Defendant’s potential liability exposure, this proposed
13 settlement of \$450,000 is within the range of reasonableness. This settlement is estimated to pay
14 Class Members an average payment of approximately \$1,856.06.³ The proposed Agreement
15 satisfies all the criteria for preliminary approval under Rule 3.769 of the California Rules of Court.

16 As the following sections show, Class Counsel believe that the proposed settlement is in
17 the best interests of the Class based on the negotiations and a detailed knowledge of the issues
18 presented in this action. The length and risks of trial and perils of litigation that affect the value of
19 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the
20 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
21 establishing specific damages and various possible delays and appeals, were also carefully
22 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the
23 product of an all-day mediation with mediator Steve Serratore and was the product of non-
24 collusive, arm’s-length negotiations by informed counsel and parties. The settlement is fair,

25 _____
26 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as
27 Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

28 ² Exhibit 1 at Paragraph 5.

³ The Net Settlement Amount is approximately \$245,000. \$245,000 divided by 132 class members
= \$1,856.06.

1 reasonable, and adequate. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms
2 contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff
3 as Class Representative; (4) appointment of Mara Law Firm, PC, as Class Counsel; (5) approval
4 of the Parties' proposed Notice of Class Action Settlement⁴ (referred to herein as the "Class
5 Notice" or "Notice") and method of notifying the Class about the settlement; and (6) a hearing
6 date for final approval of April 17, 2025, or other available date for the Court.

7 **II. BACKGROUND**

8 A class action complaint was filed by Plaintiff on April 14, 2023, in Stanislaus County
9 Superior Court (Case No. CV-23-002006). The complaint alleges the following claims: (1) Failure
10 to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Adopt a
11 Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply with Itemized
12 Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at the Time of
13 Termination of Employment, and (6) Violation of Unfair Competition Law (Business &
14 Professions Code § 17200, *et seq.*). Defendant filed an answer to Plaintiff's class action complaint
15 on May 17, 2023. (Mara Dec. ¶ 10).

16 Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA")
17 and Defendant in accordance with the Private Attorneys General Act of 2004 ("PAGA") on April
18 10, 2023. On July 27, 2023, Plaintiff filed a PAGA complaint in the Stanislaus County Superior
19 Court (Case No. CV-23-004196). The complaint alleges the following PAGA claims: (1) Failure
20 to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Pay All
21 Wages Due at the Time of Termination of Employment, (4) Knowing and Intentional Failure to
22 Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Adopt a Complaint
23 Sick Pay Policy. Defendant filed an answer to Plaintiff's PAGA complaint on November 14, 2023.
24 (Mara Dec. ¶ 11).

25 On September 20, 2024, Plaintiff provided an amended notice to the LWDA and
26 Defendant. On October 14, 2024, the Parties filed a stipulation for leave to allow Plaintiff to file a
27

28 ⁴ The Class Notice is attached to the Agreement as Exhibit A.

1 First Amended PAGA Complaint adding in a cause of action pursuant to California Labor Code §
2 213, which was granted by the Court on the same day. Plaintiff filed his First Amended PAGA
3 Complaint on October 14, 2024. (Mara Dec. ¶ 12).

4 On October 14, 2024, the Parties stipulated to consolidate Plaintiff's class and PAGA
5 actions with the class action as the lead case. The Court granted this stipulation on the same day.
6 (Mara Dec. ¶ 13).

7 **III. INVESTIGATION/LITIGATION HISTORY**

8 **a. Discovery and Investigation**

9 After filing, the Parties engaged in informal discovery. These discovery efforts led to
10 Defendant producing hundreds of pages of policy documents such as employee handbooks and
11 Collective Bargaining Agreements that covered Class Members' employment. Defendant further
12 produced a sampling of time and pay records for Class Members. Defendant also produced
13 Plaintiff's personnel file and time and pay records. Plaintiff also requested, and Defendant
14 produced, data surrounding the number of current and former employees, as well as the number of
15 workweeks worked by Class Members during the relevant time period, to establish a potential
16 exposure model in preparation for mediation. From this discovery, Plaintiff and his Counsel were
17 able to analyze Defendant's liability in this action and prepare a realistic damage model. (Mara
18 Dec. ¶ 14).

19 **b. The Parties Agreed to Attend Mediation**

20 The Parties attended an all-day mediation presided over by wage and hour mediator Steve
21 Serratore on May 17, 2024. This mediation was successful. The Parties then met and conferred
22 over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The
23 Parties seek preliminary approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 15;
24 *see also* Exhibit 1 attached thereto).

25 ///

26 ///

27 ///

1 **c. The Parties' Staunchly Conflicting Positions**

2 **i. Unpaid Wages**

3 Plaintiff contends that Defendant does not pay drivers for all time worked. Employees must
4 be paid for all "hours worked," as that phrase is defined in the Wage Order and interpreted by
5 California courts. Hours worked is defined in the Wage Order as "the time during which an
6 employee is subject to the control of an employer and includes all the time the employee is suffered
7 or permitted to work, whether or not required to do so." Wage Order 9-2001, Subd. 2(H); *see also*
8 *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under the control standard, "it is
9 only necessary that the worker be subject to the control of the employer in order to be entitled to
10 compensation." *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 584. The *Morillion* Court
11 reasoned that an employee is under the employer's control and entitled to compensation when the
12 employer "directs, commands or restrains' an employee." *Morillion*, 22 Cal. 4th at 583 (*quoting*
13 *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968, 975). Here, Plaintiff contends
14 that drivers do not receive duty and control free meal periods and, thus, are owed wages for this
15 time. Plaintiff asserts that Defendant requires drivers to stay with their trucks at all times, including
16 during meal periods due to the nature of the gases being transported. As such, Plaintiff alleges that
17 drivers cannot leave their trucks unattended, including during unpaid meal periods. (Mara Dec. ¶
18 16).

19 Defendant contends that drivers are paid for all hours worked and that drivers do not need
20 to stay with their trucks during meal periods. Defendant contends that gases being transported by
21 drivers are class 2 gases that do not have to be attended at all times. Defendant asserts that under
22 the federal regulation it contends applies to the gases being transported by drivers, drivers do not
23 have to remain with the load at all times and can take duty and control free meal periods. As such,
24 there is a dispute about whether drivers must remain with their load at all times, including during
25 unpaid meal periods. (Mara Dec. ¶ 17).

26 ///

27 ///

1 **ii. Wage Statements and Waiting Time Penalties**

2 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
3 waiting time penalty claims. These claims are derivative of Plaintiff’s unpaid wages claim. Should
4 Plaintiff’s unpaid wages claim fail, these claims would also fail. (Mara Dec. ¶ 18).

5 In addition, Defendant contends that even if Plaintiff were successful in his unpaid wage
6 claim, he would have to prove Defendant “willfully” failed to pay employees the appropriate
7 wages due upon separation of employment. “A willful failure to pay wages within the meaning of
8 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee
9 when those wages are due. However, a good faith dispute that any wages are due will preclude
10 imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good
11 faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or
12 fact, which would preclude any recovery on the part of the employee. The fact that a defense is
13 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Id.* (Mara
14 Dec. ¶ 19).

15 Defendant contends that any failure to pay wages due at the separate of employment was
16 not willful. Defendant argues that it would not be liable for waiting time penalties because a “good
17 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
18 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 20).

19 Further, Defendant contends that Plaintiff would also have to prove that Defendant
20 “knowingly and intentionally” failed to comply with the wage statement requirements under Labor
21 Code § 226. *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. Defendant
22 maintains that it reasonably, and in good faith believes that it was providing a complete and
23 accurate wage statement in compliance with California law. (Mara Dec. ¶ 21).

24 Defendant also argues that Plaintiff’s unpaid wages claims cannot form the basis of his
25 wage statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22
26 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor
27 Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay
28

1 received even if the pay is later determined to be inaccurate. (Mara Dec. ¶ 22).

2 **iii. PAGA Penalties**

3 Plaintiff also seeks PAGA penalties for the claims outlined above and for Defendant's
4 alleged violation of California Labor § 213. PAGA allows the private enforcement of certain
5 California Labor Code sections relating to wage and hour violations. The statute of limitations for
6 PAGA violations goes back one year. To the extent that Plaintiff's PAGA claims are based on the
7 same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are subject to the same
8 risks on the merits as Plaintiff's class claims. (Mara Dec. ¶ 23).

9 In addition, Plaintiff alleges a cause of action pursuant to the PAGA for Defendant's
10 alleged violation of California Labor Code § 213. Plaintiff asserts that Defendant required
11 employees to receive wages by direct deposit. Under California Labor Code § 213, an employer
12 cannot force an employee to participate in its direct deposit program. Rather, wages can only be
13 direct deposited if "the employee has voluntarily authorized that deposit." Cal. Lab. Code § 213(d).
14 Plaintiff contends that Defendant requires employees to participate in its direct deposit program.
15 (Mara Dec. ¶ 24).

16 Defendant contends that it does not require employees to participate in its direct deposit
17 program. Defendant asserts that a Collective Bargaining Agreement entered into by a predecessor
18 company which covered some of the Aggrieved Employees provided that Aggrieved Employees
19 would join the direct deposit program, but Defendant did not enforce this policy and allowed
20 employees to choose how they wanted to receive their wages. Moreover, the number of Aggrieved
21 Employees that were covered by this policy is only a fraction of the total Aggrieved Employees.
22 As such, a dispute exists as to whether employees were required to enroll in Defendant's direct
23 deposit program. (Mara Dec. ¶ 25).

24 Further, Defendant maintains that Plaintiff's PAGA claims face manageability concerns
25 consistent with the class certification challenges. Specifically, Defendant has due process rights
26 which would not permit Plaintiff to attempt to generalize violations from disparate anecdotal
27 evidence. *Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1 (2014). Further, Defendant asserts that
28

1 Plaintiff cannot stack multiple PAGA penalties for the same underlying conduct, i.e., failure to
2 pay minimum wages/failure to pay all wages or overtime. *Plotnik v. Meihaus* (2014) 208
3 Cal.App.4th 1590, 1612. (Mara Dec. ¶ 26).

4 In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
5 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the
6 Aggrieved Employees – assuming liability is proven as to each of Plaintiff’s claims – is higher in
7 this case where these same individuals may also be receiving money for the same unlawful conduct
8 under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No.
9 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties
10 sought are at least partially duplicative of penalties granted by the underlying Labor Code
11 violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has
12 discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
13 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”). As such,
14 the Court will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees.
15 (Mara Dec. ¶ 27).

16 **IV. TERMS OF THE PROPOSED SETTLEMENT**

17 Under the terms of the settlement, Defendant will create a settlement fund of \$450,000.

18 **a. Deductions from the Settlement**

19 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
20 action be settled and compromised for the non-reversionary total sum of \$450,000 (“Gross
21 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
22 up to \$150,000 (33 1/3% of the GSA)⁵ to compensate Class Counsel for work already performed
23 and all work remaining to be performed in documenting the settlement, administering the
24 settlement, and securing Court approval; (b) actual litigation expenses estimated not to exceed
25 \$20,000;⁶ (c) a Class Representative Service Payment to the named class representative in a sum

26 _____
27 ⁵ Although Plaintiff’s Counsel seeks attorneys’ fees under the percentage method, Plaintiff’s
28 Counsel will also provide the Court with their lodestar information at final approval.

⁶ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the
amount of actual costs incurred during the litigation of this case. Should the actual costs be lower

not to exceed \$5,000 in consideration for prosecuting this class action, serving as Class Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs in the event he had been unsuccessful in the matter; (d) settlement administration fees and expenses to Simpluris, estimated not to exceed approximately \$10,000;⁷ and (e) \$20,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or \$15,000 will be provided to the LWDA, and 25%, or \$5,000, will be available for distribution to PAGA Aggrieved Employees.⁸

b. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that \$245,000 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members.⁹ Subject to the terms and conditions of the settlement, each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked. (Exhibit 1 at Paragraph 61.1.1). This payment will be divided into a "wage portion" to compensate Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members for alleged interest and penalties. The wage portion will make up one-tenth (1/10) of each Participating Class Members' individual settlement payment, and the non-wage portion will make up nine-tenths (9/10) of each Participating Class Members' individual settlement payment. (Exhibit 1 at Paragraph 61.1.3).

than \$20,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

⁷ Simpluris will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Agreement, the difference will be added to the Net Settlement Amount for distribution to Participating Class Members.

⁸ PAGA Aggrieved Employees are all individuals employed by Defendant in California from April 10, 2022 through August 15, 2024. (Exhibit 1 at Paragraph 29).

⁹ Participating Class Members are all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. (Exhibit 1 at Paragraph 34).

1 In addition, each PAGA Aggrieved Employee will receive a proportionate share of the Net
2 PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for
3 Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of
4 workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then
5 multiplied by the Net PAGA Settlement Amount. Therefore, the value of each Aggrieved
6 Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he
7 or she worked during the PAGA Period. (Exhibit 1 at Paragraph 62.1.1). This payment will be
8 treated as 100% penalties. (Exhibit 1 at Paragraph 62.2).

9 Under no circumstances will any portion of the \$450,000 settlement revert to Defendant.

10 **c. Notice to the Class**

11 Within thirty (30) days after entry of the Preliminary Approval Order, Defendant shall
12 deliver to the Settlement Administrator an electronic database, which will list the Class¹⁰ and
13 PAGA¹¹ Data. The Settlement Administrator will use the National Change of Address Database
14 to obtain updated addresses for Class Members. (Exhibit 1 at Paragraph 67.1).

15 Within fifteen (15) days after receipt of the Class and PAGA Data, the Settlement
16 Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class
17 Members and Aggrieved Employees using the mailing address information provided by Defendant
18 and the results of the search of the National Change of Address Database on all Class Members
19 and Aggrieved Employees. (Exhibit 1 at Paragraph 67.4).

20 After notices are mailed, Class Members will have forty-five (45) days to respond to the

21
22 ¹⁰ The "Class Data" is the electronic database Defendant shall deliver to the Settlement
23 Administrator which will list the following information for each Class Member: (1) first and last
24 name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5)
the total number of weeks during which the Class Member performed work during the Class
Period. The Class Data shall be based on Defendant's time clock data and other business records.
(Exhibit 1 at Paragraph 7).

25 ¹¹ The "PAGA Data" is the electronic database Defendant shall deliver to the Settlement
26 Administrator which will list the following information for each Aggrieved Employee: (1) first
27 and last name; (2) last known mailing address; (3) social security number; (4) telephone number;
28 and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee
performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be
based on Defendant's time clock data and other business records. (Exhibit 1 at Paragraph 30).

1 settlement (this is referred to as the “Response Deadline”). (Exhibit 1 at Paragraph 40). Class
2 Members may respond to the settlement by requesting to be excluded from it or objecting to it.
3 Class Members can also file a dispute as to the number of workweeks attributed to them.

4 **i. Requests for Exclusion**

5 The Class Notice will provide that Class Members who wish to exclude themselves from
6 the Settlement must mail to the Settlement Administrator a written request for exclusion. The
7 written request for exclusion must: (a) state the Class Member’s name, address, telephone number,
8 and the last four digits of the Class Member’s social security number or employee identification
9 number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the
10 Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member
11 or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.
12 (Exhibit 1 at Paragraph 69).

13 **ii. Objections to the Settlement**

14 The Class Notice will provide that the Class Members who wish to object to the Settlement
15 must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no
16 later than the Response Deadline. The timeframe to submit an objection will not be increased for
17 returned mailings. Any Objections shall state: (a) the objecting person’s full name, address, and
18 telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in
19 clear and concise terms, the legal and factual arguments supporting the objection; (d) list
20 identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e)
21 provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval
22 hearing. Objecting Class Members may (though are not required to) appear at the Final Approval
23 Hearing, either in person or through the objector’s own counsel. Objecting Class Members are
24 permitted to appear regardless of whether they submitted a written objection. (Exhibit 1 at
25 Paragraph 68).

26 ///

27 ///

1 **iii. Disputes**

2 If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute
3 the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee
4 may notify the Settlement Administrator by mail or telephone no later than the Response Deadline
5 and should produce any available supporting evidence, such as wage statements, offers of
6 employment, termination letters, and/or other employment records, to the Settlement
7 Administrator. The documentation should provide evidence of the dates the Class Member or
8 Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period.
9 The Settlement Administrator shall then provide the documentation provided by the Class Member
10 or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation
11 provided by the Class Member or Aggrieved Employee, and shall provide information to the
12 Settlement Administrator in response to any such disputed claim within seven (7) business days.
13 Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall
14 evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the
15 decision as to which dates should be applied. The determination by the Settlement Administrator
16 shall be final and binding. (Exhibit 1 at Paragraph 70).

17 **iv. Returned Notices**

18 If a Class Notice is returned because of an incorrect address, within three (3) business days
19 from receipt of the returned notice, the Settlement Administrator will conduct a search for a more
20 current address for the Class Member and re-mail the Class Notice to the Class Member. The
21 Settlement Administrator will use the National Change of Address Database and skip traces to
22 attempt to find the current address. The Settlement Administrator will be responsible for taking
23 reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is
24 returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a
25 minimum, the tracking of all undelivered mail, performing address searches for all mail returned
26 without a forwarding address, and promptly re-mailing to Class Members for whom new addresses
27 are found.
28

1 **d. Distribution of Funds**

2 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
3 Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date.¹² (Exhibit
4 1 at Paragraph 21 and 81.1). Within fourteen (14) days after the Settlement Administrator's receipt
5 of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net
6 Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement
7 Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel
8 for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement
9 Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs,
10 as approved by the Court; and (6) the LWDA Payment to the LWDA. (Exhibit 1 at Paragraph
11 81.2).

12 Participating Class Members and Aggrieved Employees must cash or deposit their
13 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
14 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar
15 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
16 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become
17 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
18 uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder
19 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks
20 are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks
21 returned as undeliverable and funds associated with those checks remaining un-cashed shall be
22 sent to The United Way, which is a non-profit organization that supports projects that benefit
23 employees and applicants throughout the State of California, thereby leaving no "unpaid residue"
24 subject to the requirements of Code of Civil Procedure section 384, subdivision (b). The Parties
25 agree that designating The United Way as the *cy pres* beneficiary will further the purposes of the

26 ¹² The Effective Final Settlement Date is the date when the final approval of the settlement can no
27 longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the
28 court grants final approval of the settlement, the date the Court enters judgment granting final
approval of the settlement. (Exhibit 1 at Paragraph 18).

underlying class proceedings in this action will promote justice for all Californians. (Exhibit 1 at Paragraph 77).

e. Release of Claims

In exchange for an Individual Class Payment, Participating Class Members will agree to the following release:

The Released Class Claims include all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Actions, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 204, 210, 213, 218, 218.5, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, and 1197, California Industrial Welfare Commission Wage Orders, California Code of Regulations, Title. 8, section 11040, 11090, and 3395 *et seq.*, Business and Professions Code sections 17200 *et seq.*, California Code of Civil Procedure section 1021.5, and including all claims for or related to alleged unpaid wages, minimum wages, hours worked, overtime or double time wages, regular rate of pay, bonus and incentive pay, timely payment of wages during employment, timely payment of wages at separation, wage statements, payroll records and recordkeeping, meal periods and meal period premiums, rest breaks and rest break premiums, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, class actions, representative actions, aggrieved party claims, declaratory relief, penalties of any nature (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Actions (collectively “Released Class Claims”), during the Class Period. Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims.

(Exhibit 1 at Paragraph 37).

In addition, all Aggrieved Employees will agree to the following release in exchange for an Individual PAGA Payment:

PAGA Aggrieved Employees are deemed to release all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of Plaintiff and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA letter, including but not limited to all claims arising under the California Labor Code including, but not limited to sections 201, 202, 203, 204, 210, 213, 218, 221, 222, 223, 224, 226, 226.3, 226.7, 233, 234, 246, 246.5, 510, 512, 515, 558, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1, as alleged

1 in the PAGA Action complaint, and the California Industrial Welfare Commission
2 Wage Orders based on the facts alleged in the Actions (collectively “Released
3 PAGA Claims”). The Settlement shall release, and bar, all Released PAGA Claims
4 by or on behalf of Plaintiff and all PAGA Members during the PAGA Period.
PAGA Members cannot and do not have the right to opt out of the release of their
PAGA claims against the Released Parties.^[13]

(Exhibit 1 at Paragraph 38).

5 In addition, Plaintiff has agreed to a broader release of his claims than that being agreed to
6 by any other Class Member. (See Exhibit 1 at Paragraph 80).

7 **V. ARGUMENT**

8 **a. Class Action Settlements Are Subject to Court Review and Approval Under 9 the California Rules of Court**

10 Rule 3.769 requires court approval for class action settlements.¹⁴ “Before final approval,
11 the court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules
12 of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of
13 class settlements:

14 (a) A settlement or compromise of an entire class action, or a cause of action in
15 a class action, or as to a party, requires the approval of the court after
hearing.

16 ...

17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement agreement
and proposed notice to class members must be filed with the motion, and
the proposed order must be lodged with the motion.

19 Courts act within their discretion in approving settlements that are fair, not collusive, and
20 take into account “all the normal perils of litigation as well as the additional uncertainties inherent

21 ¹³ The “Released Parties” are collectively: (i) Defendant; (ii) each of Defendant’s respective past
22 and present parents, subsidiaries, partners, affiliates, brands, including, without limitation, Messer
23 North America Inc., and any corporation, limited liability company, or partnership which could be
24 jointly liable with Defendant for the claims alleged; (iii) the past and present board members,
directors, officers, agents, employees, attorneys, insurers, members, partners, managers,
25 contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans,
transferees, predecessors, successors, and assigns of any of the foregoing which could be jointly
26 liable with Defendant for the claims alleged. (Exhibit 1 at Paragraph 39).

27 ¹⁴ The California Supreme Court also has authorized California’s trial courts to use Federal Rule
28 23 and cases applying it for guidance in considering class issues. See *Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate,
therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167,
2 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
3 U.S. 905.

4 **b. The Settlement is Fair, Reasonable, and Adequate**

5 In deciding whether to approve a proposed class action settlement under Code of Civil
6 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
7 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
8 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
9 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
10 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
11 objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these
12 elements – with the exception of the percentage of objectors, which cannot be anticipated at this
13 stage of the litigation – bearing on the fairness of the proposed settlement are present here and the
14 Court’s grant of preliminary approval is therefore requested.

15 **i. The Settlement was Reached as a Result of Arm’s-Length Negotiations**

16 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
17 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
18 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s
19 length settlement negotiations until the settlement was reached. The terms of the settlement are
20 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as
21 Exhibit 1. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks
22 of litigation and understands the benefit of the Class receiving significant settlement funds
23 immediately as opposed to risking continued litigation in achieving class certification, preparing
24 for and conducting a trial, and/or an appeal that may take several more years to litigate.

25 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

26 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
27 before reaching the proposed settlement, and engaged in sufficient investigation, research and
28

1 discovery to support the settlement. The settlement was only possible following investigation,
2 discovery, and evaluation of Defendant’s policies and procedures, as well as the data produced for
3 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of
4 liability and potential damages. This litigation has reached the stage where “the Parties certainly
5 have a clear view of the strengths and weaknesses of their cases” sufficient to support the
6 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

7 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

8 Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and
9 hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating
10 unpaid wages, waiting time penalty, and wage statement claims. (Mara Dec. ¶¶ 3-9). Plaintiff’s
11 Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for
12 California Labor Code violations and thus are experienced and qualified to evaluate the class
13 claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability
14 of the defenses. This experience instructed Plaintiff’s Counsel on the risks and uncertainties of
15 further litigation and guided their determination to endorse the proposed settlement.¹⁵ Defendant’s
16 Counsel practices labor and employment law and have represented numerous employers in similar
17 types of claims. Accordingly, both Parties’ Counsel are experienced in wage and hour employment
18 law and class actions.

19 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

20 An understanding of the amount in controversy is an important factor in determining
21 whether the settlement “of the class members’ claims is reasonable in light of the strengths and
22 weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail,*
23 *Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los*
24 *Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength
25 of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

26
27 ¹⁵ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Class Notice has been provided to the class and they have had an opportunity to respond. This
information will be provided to the Court in conjunction with the final approval motion.

1 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
2 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
3 that of the attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
4 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
5 provided there is a record which allows "an understanding of the amount that is in controversy and
6 the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently,
7 "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
8 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of
9 reasonableness." *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*
10 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties'
11 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

12 **1. The Settlement is Fair and Reasonable Based on the Strengths**
13 **of Plaintiff's Case and the Risks and Costs of Further Litigation**

14 The proposed settlement was only possible following significant discovery and an
15 evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant
16 produced for the putative class as referenced above. This permitted Class Counsel to engage in a
17 comprehensive analysis of liability and potential damages. The discovery conducted allowed
18 Plaintiff to evaluate the strengths and weaknesses of his theories of liability, which are predicated
19 on Plaintiff's claims that Defendant failed to provide to pay all wages owed to driver employees.
20 As explained herein, Defendant maintains that the discovery produced demonstrates that it would
21 succeed at both in denying class certification and on the merits.

22 Although, Plaintiff believes this case is suitable for certification on the claimed bases that
23 there are company-wide policies that Plaintiff contends violate California law and uniformly affect
24 the Class Members, Defendant's counterarguments raise uncertainties with respect to both class
25 certification and success on the merits. As the California Supreme Court ruled in *Sav-On v.*
26 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's
27 sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to
28

1 certification of wage and hour claims.¹⁶ While remaining confident in the strengths of his claims,
2 all of these factors led Plaintiff to discount the following maximum potential damage exposure.

3 **2. Potential Exposure on Plaintiff's Claims**

4 The settlement encompasses 15,494 workweeks.¹⁷ This equates to approximately 77,470
5 shifts. Employees earned approximately \$33.52 per hour on average. (Mara Dec. ¶ 28).

6 Plaintiff alleges that Defendant failed to pay employees all wages owed because employees
7 are not free of all duties and controls during unpaid meal periods. Plaintiff asserts that drivers
8 transport hazardous gases and, therefore, have to remain with their trucks throughout their shifts,
9 including during meal periods. If Plaintiff were to prevail on this claim, Plaintiff and the Class
10 Members would be entitled to the following potential damages: \$1,298,397 (77,470 shifts x \$33.52
11 x 0.5 hours = \$1,298,397.20). (Mara Dec. ¶ 29).

12 Defendant contends that drivers have been paid for all hours worked. Defendant contends
13 that gases being transported by drivers do not have to be attended at all times. Defendant asserts
14 that under the federal regulation that it contends applies to the gases being transported by drivers,
15 drivers do not have to remain with the load at all times and can take duty and control free meal
16 periods. Accordingly, Defendant claims Plaintiff should take nothing on this claim and, if the
17 factfinder agreed, Plaintiff would take nothing. Although remaining confident in his position,
18 Plaintiff had no way of knowing how the factfinder would rule on this issue and a substantial
19 discount had to be given to make settlement possible.

20 Plaintiff alleges that Defendant does not provide accurate itemized wage statements to
21 employees. This claim is derivative of Plaintiff's unpaid wages claim. Under California Labor
22 Code § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for the initial pay
23 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation

24 ¹⁶ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of
25 class claiming misclassification and ordering summary adjudication in favor of employees), *review*
26 *granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only);
27 *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class
28 claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing
denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming
denial of certification).

¹⁷ Exhibit 1 at Paragraphs 51 and 56.1.

1 in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).
2 If Plaintiff were to prevail on this claim, Plaintiff and the Class Members would be entitled to the
3 following potential damages: \$388,000 (97 employees x \$4,000 maximum penalty = \$388,000).
4 (Mara Dec. ¶ 30).

5 Defendant asserts that because Plaintiff's unpaid wages claim fails, this claim also fails. In
6 addition, Defendant contends that Plaintiff cannot show that Defendant "knowingly and
7 intentionally" failed to comply with the wage statement requirements under Labor Code § 226.
8 *See Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. Defendant maintains that
9 it reasonably, and in good faith believes that it was providing a complete and accurate wage
10 statement in compliance with California law. Defendant also argues that Plaintiff's unpaid wages
11 claims cannot form the basis of his wage statement claim. Defendant relies on the case *Maldonado*
12 *v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees do not suffer
13 injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the
14 hours worked and the pay received even if the pay is later determined to be inaccurate. Plaintiff
15 had to take Defendant's positions into account in reaching a settlement and consider the possibility
16 that the fact finder could determine that these violations were not knowing and intentional, that
17 Defendant in good faith believed it was providing accurate itemized wage statements, and that
18 Class Members did not suffer an injury under California Labor Code § 226(a).

19 If Plaintiff were to prevail on his unpaid wages claim, he and the Class Members may also
20 be entitled to waiting time penalties. Plaintiff calculates the potential exposure under his waiting
21 time penalties cause of action as \$386,150 (48 former drivers in the three-year statute of limitations
22 x 8 hours per day x \$33.52 x 30 days = \$386,150.40). (Mara Dec. ¶ 31).

23 As these damages are derivative of Plaintiff's unpaid wages claim, if Plaintiff's unpaid
24 wages fail, this claim also would fail. Defendant also contends that Plaintiff would not be able to
25 show that this violation was willful. On this basis, Defendant contends that Plaintiff would not be
26 entitled to any damages for waiting time penalties. Plaintiff had to take into consideration the
27 possibility of the fact finder determining that this violation was not willful.
28

1 Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
2 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
3 reads, in part, as follows:

4 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
5 pay period for the initial violation and two hundred dollars (\$200) for each
6 aggrieved employee per pay period for each subsequent violation.

7 The statute of limitations for PAGA violations go back one year. The maximum potential
8 damages under Plaintiff's PAGA claim is: \$687,500 (\$100 x 3 PAGA violations (unpaid wages, §
9 213, and wage statements) x 6,970 pay periods = \$2,091,000 plus \$100 x 1 PAGA violation
10 (waiting time penalties) x 48 pay periods = \$4,800). (Mara Dec. ¶ 32). As Plaintiff's PAGA claims
11 are primarily based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA
12 claims are subject to the same risks on the merits as Plaintiff's class claims. In addition, the Court
13 may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood
14 of the Court reducing the PAGA penalties awarded to Plaintiff and the Aggrieved Employees –
15 assuming liability is proven as to each of Plaintiff's claims – is higher in this case where these
16 same individuals may also be receiving money for the same unlawful conduct under the class
17 claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-
18 AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least
19 partially duplicative of penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal.
20 Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what
21 amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the
22 potential PAGA penalties are highly uncertain.”). As such, the Court may reduce any PAGA
23 penalty amount awarded to Plaintiff and the Aggrieved Employees.

24 Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if
25 he were successful in his core claim for unpaid wages, Defendant's exposure would be
26 approximately \$1,298,397. If the fact finder were to side with Defendant on this claim, Plaintiff
27 and the Class Members would not be entitled to any damages for wage statements, waiting time
28 penalties, or PAGA penalties that are derivative of and dependent on Plaintiff prevailing on his

1 unpaid wages claim. If Plaintiff is successful in his unpaid wages claim, and is able to prove that
2 Defendant's wage statement violations were knowing and intentional and that the waiting time
3 penalties violations were willful, he and the Class may also be entitled to damages for wage
4 statements and waiting time penalties in the amount of \$774,150 [\$388,000 (wage statements) and
5 \$386,150 (waiting time penalties) = \$774,150]. Plaintiff and the Aggrieved Employees may also
6 be entitled to PAGA penalties in the amount of \$2,095,800, subject to Court reduction. (Mara Dec.
7 ¶ 33).

8 **3. The Settlement Amount of \$450,000 is Reasonable**

9 In light of the risks Plaintiff's claims faced, Plaintiff and his Counsel believe that the
10 settlement amount of \$450,000 – with an average settlement share amount estimated at \$1,856.06
11 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 34).

12 It should be noted that a settlement is not judged solely against what might have been
13 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
14 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91
15 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;
16 "Compromise is inherent and necessary in the settlement process...even if the relief afforded by
17 the proposed settlement is substantially narrower than it would be if the suits were to be
18 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
19 served by a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation." *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688
21 F.2d 615, 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the
22 potential recovery does not...render the settlement inadequate or unfair"); *see also In re*
23 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 , (noting that
24 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
25 attorneys' fees was higher than median percentage for recoveries in shareholder class action
26 settlements, averaging 2.2%-3% from 2002 through 2006).

27 ///

1 **c. Provisional Certification Should be Granted**

2 Under California law, a class action is appropriate when the class is ascertainable and there
3 is “a well defined community of interest in the questions of law and fact involved affecting the
4 parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code
5 of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of
6 the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims,
7 adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P.
8 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted
9 that while a court must certify a class for settlement purposes if a class has not already been
10 certified, “it is well established that trial courts should use different standards to determine the
11 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
12 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior*
13 *Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
14 1794, 1807, fn. 19. Plaintiff contends, and Defendant does not dispute for settlement purposes
15 only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App.
16 4th 224, 237-38. Plaintiff seeks approval of the following Class for settlement purposes only: all
17 persons employed by Defendant in California as a non-exempt driver from April 14, 2019 through
18 August 15, 2024.

19 **d. Notice to the Class Complies with California Rule of Court 3.769(f)**

20 California Rule of Court 3.769(f), provides:

21 If the court has certified the action as a class action, notice of the final approval
22 hearing must be given to class members in the manner specified by the court. The
23 notice must contain an explanation of the proposed settlement and procedures for
24 class members to follow in filing written objections to it and in arranging to appear
25 at the settlement hearing and state any objections to the proposed settlement.

26 The proposed Class Notice meets all of these requirements. The proposed Class Notice
27 advises the class of their rights to participate in the settlement, how to and when to object to or
28 request exclusion from the settlement, and the date, time, and location of the final approval hearing.
The proposed Class Notice is attached as Exhibit A to the Agreement.

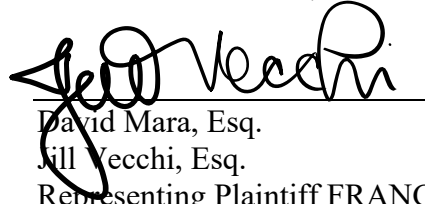
///
///

1 **VI. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
3 Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be
4 granted final approval. Under the applicable class action criteria and guidelines, the proposed
5 settlement should be preliminarily approved by the Court, the class should be conditionally
6 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiffs also
7 respectfully request the Court set a final approval hearing date of April 17, 2025, or other available
8 date for the Court.

9
10 Dated: November 6, 2024

MARA LAW FIRM, PC

11 
12 _____
13 David Mara, Esq.
14 Jill Vecchi, Esq.

15 Representing Plaintiff FRANCISCO RAMIREZ,
16 on behalf of himself, all others similarly situated,
17 and on behalf of the general public.
18
19
20
21
22
23
24
25
26
27
28