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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SANTA CLARA

15 OSCAR PEREZ,

16 Plaintiff,

17 vs.

18 DGA SERVICES, INC. DBA JIT
19 TRANSPORTATION, a corporation, and
20 DOES 1-100, inclusive,

21 Defendants.

Case No.: 23CV416653

PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT

Date: December 11, 2024

Time: 1:30 pm

Dept: 3

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1 **I. INTRODUCTION**

2 On May 25, 2023, Plaintiff Oscar Perez (“Perez”), a former truck driver for Defendant DGA
3 Services, Inc. (“Defendant”) filed the instant class action against Defendant alleging wage and hour
4 violations, specifically claims for minimum wage and overtime violations, meal period violations, rest
5 period violations, failure to pay all wages at cessation of employment, failure to furnish accurate
6 itemized wage statements, and unlawful business practices. On July 31, 2023, Plaintiff filed a First
7 Amended Complaint to add a cause of action under PAGA based on the same general set of facts as the
8 original Complaint. On May 1, 2024, Plaintiff filed a Second Amended Complaint adding a second
9 named Plaintiff, Yuri Landaverde (“Landaverde”, collectively with Perez, “Plaintiffs”). Plaintiffs
10 alleged they and other drivers were not subject to the exemptions from overtime and enforcement of
11 meal and rest period laws that apply to drivers who drive in interstate commerce. Plaintiffs alleged that
12 they drove on purely local routes and were not involved in transporting goods in a continuous chain of
13 interstate commerce. Plaintiffs alleged that Defendant’s other drivers similarly did not operate in
14 interstate commerce.

15 Through both formal and informal discovery, which included Defendant furnishing Plaintiffs
16 with extensive records relating to the routes driven by Plaintiffs and the putative class during the class
17 period, including the origin and destination of the goods transported by Defendant’s drivers on each
18 route driven during the putative class period, Plaintiffs learned that many of Defendant’s drivers did, in
19 fact, drive routes that crossed state lines, primarily driving into Nevada from California. Further,
20 discovery revealed that many of the routes picked up goods from major airports and shipping ports,
21 where those goods almost necessarily originated from outside of the state of California. In addition,
22 following initiation of the Action, Defendant entered into settlement agreements with approximately
23 half of the putative class members, in which they agreed to release the claims asserted in this action in
24 exchange for consideration ranging from \$50 to \$250.

25 In an attempt to reasonably resolve this matter in light of the foregoing facts, Plaintiffs and
26 Defendant participated in a full day mediation with experienced mediator Nikki Tolt, Esq. on March
27 21, 2024. The parties reached a settlement in principle at the end of this mediation and subsequently
28 drafted and executed a long-form settlement agreement. Pursuant to the settlement, Defendant agreed

1 to pay a total of \$55,000.00 to resolve the claims in this action asserted on behalf of a class of 68
2 individuals (i.e., only those individuals who had not entered into a prior settlement agreement with
3 Defendant) and 91 total “Aggrieved Employees.” As part of the settlement, the parties agreed to pay up
4 to \$5,500 to Atticus Administration, LLC to administer the settlement; \$1,000 to resolve the PAGA
5 claims; \$3,000 total to Plaintiffs for their services as Class Representatives; and \$11,000 in attorney’s
6 fees and up to \$16,000 in declared costs to Class Counsel. This leaves at least \$18,500 to be distributed
7 among the class members. That net amount results in approximately \$272.06 paid to each class
8 member on average (more than the employees who entered into settlement agreements with Defendant
9 received). The \$55,000 settlement also represents approximately 4.4% of the maximum estimated non-
10 PAGA damages and statutory penalties and approximately 43.5% of the realistic non-PAGA exposure.
11 Because this settlement provides a meaningful recovery for the class in light of the very strong defenses
12 available to Defendant, the Court should find it fair, reasonable, and adequate and grant preliminary
13 approval of the settlement.

14 **II. SUMMARY OF THE CASE**

15 **A. Plaintiffs’ Claims**

16 Plaintiffs alleged that they, and other of Defendant’s truck drivers who drove trucks weighing
17 between 10,000 and 26,000 lbs. gross vehicle weight, fell outside of the federal motor carrier
18 exemption because they drove local routes transporting local goods and were therefore entitled to be
19 paid overtime wages and to receive meal and rest periods in compliance with California law. Plaintiffs
20 alleged that because Defendant did not pay them overtime or furnish meal and rest periods that
21 complied with California law (nor pay premium wages for that failure), Defendant violated California’s
22 laws with respect to overtime, meal and rest breaks, minimum wage, wage statements, and payment of
23 waiting time penalties. Plaintiffs alleged violations of Business and Professions Code sections 17200,
24 *et seq.* that are derivative of these facts.

25 **B. The Class**

26 Plaintiff seeks to represent a Class consisting of all current and former Truck Drivers who
27 worked for Defendant from May 25, 2019, through April 17, 2024, who have not previously released
28 their claims against Defendant and/or accepted payments in exchange for release of their claims against

1 Defendant. (the “Class”). Class Action and PAGA Settlement Agreement and Class Notice
2 (“Settlement Agreement” or “SA”) at § 1.5. The Class consists of 68 individuals, and the Settlement
3 Agreement covers a total of 5,236 workweeks. SA at § 4.1.

4 **C. Procedural History and Factual Investigation**

5 On May 24, 2023, Plaintiff Perez sent notice to the LWDA and Defendant of Defendant’s
6 alleged violations of the Labor Code, specifically Labor Code sections 201-204, 210, 226, 226.7, 510,
7 512, 1182.12 *et seq.* 1198, and 2802. Declaration of Vladimir J. Kozina (“VJK Dec.”), Ex. 1. The
8 LWDA did not provide notice that it intended to investigate the alleged violations. VJK Decl., ¶ 4.

9 Plaintiff Perez filed the instant action on May 25, 2023, asserting class claims against
10 Defendant for: 1) failure to pay minimum wage; 2) failure to pay overtime; 3) failure to furnish meal
11 breaks; 4) failure to furnish rest breaks; 5) failure to pay all wages at cessation of employment; 6)
12 failure to furnish accurate itemized wage statements; and 7) violation of Business and Professions
13 Code sections 17200 *et seq.* On July 31, 2023, Plaintiff Perez filed a First Amended Complaint adding
14 a cause of action under PAGA. VJK Decl., ¶ 6. On May 1, 2024, Plaintiff Perez filed a Second
15 Amended Complaint to add Plaintiff Landaverde as a named plaintiff in this Action. VJK Decl., ¶ 6.

16 Through extensive written discovery and Defendant’s production of over ten thousand pages of
17 documents, consisting of time and payroll data for the putative class, copies of Defendant’s relevant
18 written policies, and including a spreadsheet containing over three hundred thousand lines of data
19 stating, among other things, the origin and destination points of deliveries made by Defendant’s truck
20 drivers during the class period. Through review of this information, Plaintiffs determined that on
21 numerous occasions, many of Defendant’s truck drivers drove across state lines (primarily to/from
22 Nevada) and/or picked up/delivered goods to/from major international airports such as SFO and LAX
23 that had arrived from out of state. VJK Decl., ¶ 7.

24 During the pendency of the litigation, Defendant entered into individual settlements with
25 approximately half of the putative class members in this action, whose claims are not covered by the
26 settlement agreement for which Plaintiffs seek preliminary and ultimately final approval. VJK Decl., ¶
27 8.

1 Plaintiffs and Defendant engaged in private mediation with Nikki Tolt, Esq. on March 21,
2 2024. Prior to mediation, Plaintiffs had the payroll and time data analyzed by an expert who created a
3 damages model based on the assumption that Plaintiffs and the putative class did not fall under the
4 federal motor carrier exemption and thus were not exempt from overtime and California’s meal and
5 rest break laws. VJK Dec, ¶ 9. The matter settled at the end of the full day mediation session. The
6 parties came to an agreement to settle for a total of \$55,000 subject to Court approval. VJK Decl., ¶
7 10, Exhibit 2. At all times, the parties’ negotiations were adversarial, non-collusive, and at arms’
8 length. These negotiations were supervised and facilitated by a mediator with substantial experience in
9 wage and hour class actions. VJK Decl. ¶ 11.

10 The parties utilized the Los Angeles County Model Class Action and PAGA Settlement
11 Agreement and Class Notice as the template for their agreement, modifying it as necessary to
12 encompass the specifics of the parties’ settlement. The agreement was finalized and fully executed on
13 April 17, 2024. VJK Decl., ¶ 12, Ex. 2.

14 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

15 **A. Monetary Relief Under the Settlement**

16 Pursuant to the Settlement, Defendant will pay \$55,000– the Gross Settlement Amount (“GSA”)
17 – on an all-in, non-reversionary basis to resolve the claims to be released by Participating Class
18 Members. SA § 1.22. After deducting the Administrator’s costs (up to \$5,500.00), Plaintiffs’ Class
19 Representative Service Payment (\$3,000 total), the fees (\$11,000.00, or 20% of the GSA) and declared
20 costs (up to \$16,000.00) of Class Counsel, and the amount allocated to the PAGA Claims (\$1,000), an
21 \$18,500 net settlement amount is expected to ultimately be distributed to Participating Class Members.
22 SA §§ 3.2.1, 3.2.2, 3.2.3, 3.2.5. Participating Class Members are expected to receive an average payout
23 of approximately \$272.06 each, which is greater than the maximum offered by Defendant to any of the
24 drivers with whom it entered into settlement agreements. VJK Decl. ¶ 14. In addition, the Aggrieved
25 Employees (there are 91) will receive a pro rata share of the \$1,000 portion of the PAGA payment to be
26 distributed among the Aggrieved Employees, irrespective of whether they entered into a settlement
27 agreement with Defendant. SA §§ 3.2.5.1, 4.1.

28 ///

1 **B. Notice to the Class**

2 The Class Notice will be mailed to Class Members within 29 calendar days following
3 preliminary approval of the Settlement. SA §§ 4.2, 7.4.2.

4 **C. Participation in the Settlement**

5 All Class Members who do not opt-out will be Participating Class Members; no claim form is
6 required. SA §§ 1.35, 3.2.4. Class Members who are also Aggrieved Employees will also receive a pro
7 rata share of the aggrieved employee share of the PAGA Settlement Amount (\$1,000), regardless of
8 whether they opt out. SA § 3.2.5.

9 **D. Settlement Shares**

10 Individual Class Payments will be calculated by (a) dividing the Net Settlement Amount by the
11 total number of Workweeks worked by all Participating Class Members during the Class Period and (b)
12 multiplying the result by each Participating Class Member's Workweeks. SA § 3.2.4. The average
13 payment to each Participating Class Member is expected to be approximately \$272.06 (\$18,500 / 68).
14 VJK Decl. ¶ 14. For taxes and withholdings, the Individual Class Payments will be allocated 100%
15 non-wage income, interest, and penalties. SA, § 3.2.4.1.

16 **E. Scope Of Release**

17 Upon Defendant's fulfillment of its payment obligations under the Settlement Agreement and
18 final Court approval of same, Participating Class Members will forever and completely release and
19 discharge Defendant and the Released Parties from all claims that were alleged, or reasonably could
20 have been alleged, based on the Class Period facts stated in the Operative Complaint. SA § 5.2.
21 Participating Class Members and Non-Participating Class Members who are Aggrieved Employees will
22 release Defendant and the Released Parties from all claims for PAGA penalties that were alleged, or
23 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint
24 and the PAGA Notices. SA § 5.3. Additionally, Plaintiffs will release Defendant and the Released
25 Parties from all claims, known and unknown, based on events that occurred during the Class Period.
26 SA § 5.1.

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28 ///

F. Settlement Administration

The Parties have agreed on Atticus Administration, LLC (“Atticus”), a cost-effective and experienced settlement administration provider, to administer the settlement. VJK Decl., ¶ 43. Plaintiffs seek approval of up to \$5,500 for the Administrator’s fees and costs. SA §§ 1.3, 3.2.3.

G. Payment To The LWDA

The Settlement Agreement allocates \$1,000 to resolve PAGA claims. 75% (\$750) will be paid to the LWDA, and the remaining 25% (\$250) will be distributed to Aggrieved Employees. SA, § 3.2.5. The Parties negotiated this amount in good faith, intending to serve the punitive and deterrent purposes of the PAGA. VJK Decl. ¶ 40. The LWDA has been notified of the Settlement. VJK Decl. ¶ 41, Ex. 5.

H. Service Payments to Plaintiffs.

Plaintiffs will apply for a Service Payment of \$3,000 in total (\$2,000 for Plaintiff Perez and \$1,000 for Plaintiff Landaverde) for their services to the class. SA, § 3.2.1; *see* Declaration of Oscar Perez (“Perez Dec.”), ¶¶ 2-16; Declaration of Yuri Landaverde (“Landaverde Dec.”), ¶¶ 2-15. Class Members will be apprised of Plaintiffs’ requests, their ability to review the moving papers on the Court’s website, and to object to the request if they so desire. SA, Class Notice.

I. Class Counsel’s Attorneys’ Fees and Costs

Class Counsel will request attorneys’ fees of \$11,000.00 (twenty percent of the GSA), as well as declared litigation costs of up to \$16,000.00. SA § 3.2.2. Class Members will be apprised of Class Counsel’s request, their ability to review the moving papers on the Court’s website, and to object to the request if they so desire. SA, Class Notice.

J. Final Approval Hearing

At a date set by the Court, the SA contemplates the Court will hold a Final Approval Hearing and, if the Settlement is approved, enter an Order of Final Approval approving the SA in a manner substantially consistent with its terms and intent, and enter Judgment accordingly. SA, § 10.

K. Proposed Implementation Schedule

Defendant to provide Class List to Administrator.	Within 15 calendar days of the Court’s execution of the Order Granting Preliminary Approval.
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1	Administrator to mail Class Notice.	Within 29 calendar days of the Order Granting Preliminary Approval
2	Deadline for Class Members to object or opt out.	Within 45 calendar days after Notice mailed.
3	Plaintiff to file Motion for Attorneys' Fees, Cost and Service Payment.	Not less than 16 court days before the Final Approval hearing.
4	Deadline for Plaintiff to file Motion for Final Approval.	Not less than 16 court days before the Final Approval hearing.
5	Final Approval Hearing.	Not less than 115 days after the Order Granting Preliminary Approval.

7 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS WARRANTED**

8 **A. Legal Standards for Preliminary Approval of Class Action Settlements**

9 The purpose of the preliminary evaluation of a proposed class action settlement is to determine
10 whether it is within the range of possible approval, and thus whether notice to the class of the terms and
11 conditions are warranted. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
12 Cal.App.4th 1135, 1145; *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 314 F.R.D. 312, 319; William B.
13 Rubenstein, 4 NEWBERG ON CLASS ACTION (4th Ed. 2002) § 11.25. In passing on its propriety, this
14 Court has broad discretion to determine whether a settlement is fair under the unique circumstances.
15 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The Court need only find the settlement
16 falls within a “reasonable range”, as courts recognize that approving class action settlements is “an
17 amalgam of delicate balancing, gross approximations and rough justice.” *Ibid.*; *Cordy v. USS-Posco*
18 *Indus.* (N.D. Cal. 2013) 2013 WL 4028627 *4; 4 NEWBERG § 11:25.

19 To make this fairness determination, courts consider several relevant factors, including “the
20 strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation;
21 the risk of maintaining class action status throughout the trial; the amount offered in settlement; the
22 extent of discovery completed and the stage of the proceedings; [and] the experience and views of
23 counsel . . .” *Hanlon*, 150 F.3d at 1026 (citations omitted). There is a presumption of fairness when
24 the settlement is the result of arm's-length negotiation, investigation and discovery are sufficient to
25 permit counsel and the court to act intelligently, and counsel are experienced in similar litigation, as is
26 the case here. *Dunk*, 148 Cal.App.4th 1801; *Wren v. RGIS Inventory Specialties* (N.D. Cal. 2011) 2011
27 WL 1230826 *6. California courts put a great deal of stock into what is otherwise a private, negotiated,
28 consensual agreement. Accordingly, a court’s inquiry is limited “to the extent necessary to reach a

1 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
2 between, the negotiating parties, and that the settlement, taken as a whole is fair, reasonable and
3 adequate to all concerned.” *Dunk*, 148 Cal.App.4th 1801. The Settlement Agreement satisfies all the
4 legal standards for preliminary approval and provides a substantial monetary recovery to each Class
5 Member, particularly in light of the challenges and risks to securing relief on a class-wide basis.

6 **B. The Settlement Terms are Fair, Reasonable, and Adequate**

7 The Class Action and Settlement will result in substantial benefits to the Class. The Gross
8 Settlement Amount represents 4.4% of the maximum potential non-PAGA damages and penalties
9 recoverable by the Class and 43.5% of the realistic non-PAGA damages recoverable to the Class, and
10 accounts for the substantial risks inherent in surviving summary judgment, maintaining class
11 certification and ultimately prevailing at trial. VJK Decl. ¶¶ 18-35. The circumstances of this case in
12 particular—where Defendant very likely would succeed at the summary judgment stage and intended to
13 promptly file a motion for summary judgment—make the settlement amount here fair and reasonable.
14 In contrast to the risks of continued litigation, the proposed Settlement ensures timely relief, cognizable
15 benefits, and is fair, reasonable, and adequate.

16 Under Class Counsel’s damages model, Defendant faced a maximum of \$4,200,160 in non-
17 PAGA exposure to the overall Class, when those individuals who also signed settlement agreements
18 were included in the damages model. VJK Decl., ¶ 19. These damages were based on calculations
19 involving 14,901 workweeks (or approximately 3x the total number of workweeks actually
20 encompassed by the Settlement).

21 With respect to the overtime claims, Plaintiff’s theory of liability is premised on the contention
22 that the Class was entitled to overtime wages despite being truck drivers but that the truck drivers were
23 not paid overtime premium pay when working in excess of eight hours per day and/or forty hours per
24 workweek. Based on this information, Defendant faced a maximum \$1,403,413 in unpaid overtime,
25 and \$365,198 in pre-judgment interest¹. VJK Decl., ¶ 20.

26
27
28 ¹ The interest rate applied for underpayment of wages is 10% simple interest per annum.

1 Both the meal and rest break claims are based on the contention that Defendant erroneously
2 treated its truck drivers as exempt from California's meal and rest period requirements. With respect to
3 the meal period claims, Plaintiff's expert determined that there were 67,354 shifts of sufficient length to
4 require a meal period. Of those shifts, 452 had a missed first meal period, 15,140 showed a late first
5 meal period, and 2,843 showed a short first meal period. There were also approximately 30,886 shifts
6 that were excess of 10 hours long. Of those shifts, no second meal period was recorded in
7 approximately 27,979 of them, 1,740 of the shifts showed a late second meal period, 70 showed a short
8 second meal period. Overall, the calculated potential liability on the meal period claims was \$735,206
9 with a potential \$134,580 in prejudgment interest. VJK Decl., ¶ 21.

10 With respect to the rest break claims, Plaintiffs' expert determined there were a total of 69,664
11 shifts in excess of 3.5 hours in length (i.e. the shortest a shift can be before an employee is entitled to at
12 least one rest break). Plaintiffs' counsel used the same calculated violation rate as appeared from the
13 meal period records to estimate rest period violations, as rest breaks are not recorded. Based on this,
14 Plaintiffs' expert calculated a total of \$760,484 in unpaid rest premiums and an additional \$139,938 in
15 prejudgment interest. VJK Decl., ¶ 22.

16 The minimum wage claims are based on the allegation that, at times, when Plaintiffs were
17 clocked out for meal periods, they were working but not paid for that time. This was sporadic, as more
18 often Plaintiffs either did not clock out at all for meal periods or took them late, rather than clock out
19 and continue working. Plaintiffs' expert calculated a maximum damages value of \$14,408 in unpaid
20 minimum wage on this claim. VJK Decl., ¶ 23.

21 There were a total of 5,509 estimated pay periods within the Class Period in which a wage
22 statement was issued that was non-compliant based on the alleged violations above. This resulted in a
23 maximum of \$369,366 in wage statement penalties under Labor Code section 226(e). VJK Decl., ¶ 24.

24 As for the waiting time penalty claim, there were 45 former employees who would be owed
25 waiting time penalties if Plaintiffs were successful in their overtime and meal/rest break claims, with a
26 calculated exposure of approximately \$369,366 in waiting time penalties under Labor Code section
27 203. VJK Decl., ¶ 25.

1 Finally, based on the same facts Defendant faced a calculated maximum PAGA exposure of
2 \$1,971,900. VJK Decl., ¶ 26.

3 Because of anticipated challenges to continued certification, success on the merits at trial, and
4 on appeal, Class Counsel adjusted the exposure for reasonableness, including to account for the very
5 substantial risk that the claims, all of which depended entirely on a finding that these truck drivers did
6 not fall within the federal motor carrier exemption, would ultimately be unsuccessful. *Id.* ¶¶ 30-34.
7 Further, the ultimate settlement did not encompass those individuals who entered into settlement
8 agreements with Defendant. These individuals comprised well over half of the putative class and
9 eliminated 2/3 of the estimated workweeks from the settlement (there were 14,901 estimated
10 workweeks worked by the entire putative class during the Class Period, but those employees who did
11 not execute individual settlements with Defendant only worked 5,236 workweeks).

12 Because the workweeks actually worked by the Class Members included in the settlement is
13 actually only 1/3 of those worked by the overall truck drivers during the Class Period, the potential
14 exposure for overtime, meal and rest, and wage statement claims. Thus, even before taking into
15 account litigation risk, exclusive of interest, the overtime exposure is closer to \$467,804; minimum
16 wage exposure is closer to \$4,803; the meal period exposure is closer to \$245,069; the rest period
17 exposure is closer to \$253,495; and the wage statement exposure is closer to \$123,122. In addition,
18 because less than half of the putative class members are covered by the settlement, the potential
19 waiting time penalty exposure is reduced to around \$145,806. This results in a total overall potential
20 exposure of approximately \$1,240,099 before factoring in any risk to the ultimate success of the
21 claims.

22 **C. Defendant's Defenses**

23 Defendant asserted strong legal and factual grounds to defend against Plaintiff's claims. Had
24 this matter not settled, Defendant intended to promptly file a motion for summary judgment.
25 Defendant's primary defenses to these claims are that its truck driver employees fall under the motor
26 carrier exemption and therefore exempt from overtime pay, and further that those employees are also
27 exempt from enforcement of California's meal and rest break laws due to preemption by the
28 FMCSA. For the motor carrier exemption to apply, employees must themselves drive in interstate

1 commerce, transport goods within a continuous chain of interstate commerce, or reasonably could
2 have been expected to drive in interstate commerce. *See Villalpando v. Exel Direct, Inc.* (N.D. Cal.
3 Sept. 3, 2015) 2015 WL 5179486, *31. “[E]ven a minor involvement in interstate commerce as a
4 regular part of the employee’s duties can subject that employee to the Secretary of Transportation’s
5 jurisdiction.” *Reich v. American Driver Service, Inc.* (9th Cir. 1994) 33 F.3d 1153, 1155, citing
6 *Morris v. McComb* (1947) 332 U.S. 422. As discussed, after Plaintiffs’ counsel was provided with
7 substantial documentation demonstrating regular actual interstate travel by class members, as well as
8 routine pickups from and deliveries to international airports, it became apparent that most, if not all,
9 putative class members would fall under the federal motor carrier exemption as a matter of law and
10 therefore were, in fact, not entitled to overtime pay.

11 Further, when employees are under the jurisdiction of the Secretary of Transportation (i.e., they
12 fall under the motor carrier exemption), California’s meal and rest break laws are unenforceable against
13 them because they are preempted. *Int’l Brotherhood of Teamsters, Local 2785 v. Federal Motor*
14 *Carrier Safety Administration* (9th Cir. 2021) 986 F.3d 841. Again, that numerous putative class
15 members either actually drove across state lines or were clearly transporting goods that were part of a
16 continuous chain of interstate commerce strongly indicates that Plaintiffs’ claims for meal and rest
17 period violations would ultimately be unsuccessful.

18 Finally, as the wage statement and waiting time penalty claims were derivative of the above
19 claims, they necessarily rise and fall with the overtime and meal/rest period claims. Thus, given the
20 extensive risks to ultimate success on these claims (let alone maintenance of any sizeable class given
21 the potential for individualized inquiries regarding application of the motor carrier exemption),
22 Plaintiffs’ counsel believes that a further 90% reduction in the realistic value of the claims asserted is
23 appropriate. Accordingly, Plaintiffs’ counsel determined that the realistic potential classwide exposure
24 to Defendant was approximately \$123,530. A similar reduction in the PAGA exposure would be
25 appropriate for the same reasons (1/3 of the PAGA amount due to the reduction in pay periods worked
26 by the Class Members covered by the settlement and a further 90% reduction to account for risk),
27 leaving a realistic PAGA exposure of \$65,730.

1 The \$55,000 Gross Settlement Amount represents approximately 43.5% of the realistic non-
2 PAGA exposure in this case. The \$1,000 allocated to the PAGA settlement represents approximately
3 1.5% of the realistic PAGA exposure, is fairly and equally allocated pro-rata amongst all Aggrieved
4 Employees without preference to any subgroup of employees², and is fair, reasonable, and adequate.

5 “‘Great weight’ is accorded to the recommendation of counsel, who are most closely
6 acquainted with the facts of the underlying litigation. This is because ‘[p]arties represented by
7 competent counsel are better positioned than courts to produce a settlement that fairly reflects each
8 party’s expected outcome in the litigation.’ Thus, ‘the trial judge, absent fraud, collusion, or the like,
9 should be hesitant to substitute its own judgment for that of counsel.’” *Nat’l Rural Telecomms. Coop.*
10 *v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528. Class Counsel, having demonstrated a high
11 degree of competence in the litigation of this case, as well as numerous other wage and hour class
12 actions, strongly believe that the proposed Settlement is a fair, adequate, and reasonable partial
13 resolution of the Class Action and is preferable to continued litigation against Defendant. VJK Dec.
14 ¶¶ 30-37³. The Settlement should be preliminarily approved.

15 **D. The Court Should Order Dissemination of the Proposed Notice**

16 California law vests the court with broad discretion to fashion an appropriate notice program.
17 Cal. Civ. Code §1781; Fed. R. Civ. Proc. Rule 23(e)(1); Rule 23(c)(2)(B); *Cartt v. Superior Court*
18 (1975) 50 Cal.App.3d 960, 973-74. Because all Class Members are current or former employees of
19 Defendant for whom Defendant has current or last known addresses as well as SSNs, notice is simpler
20 and more reliable than in other types of class actions. The Class Notice is consistent with notices
21 approved by state and federal courts and, under the circumstances, affords the best notice practicable.

22 The Class Notice will be sent to all Class Members, informs them of the terms of the
23 Settlement, and is neutrally worded to avoid prejudice. The Class Notice meets all of the requirements
24 of procedural due process and California Rules of Court, Rules 3.766(d)-(f) and 3.769(f). SA, pp. 22-
25

26 ² See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

27 ³ See also, *In re Wachovia Corp. “Pick-A-Payment” Mortgage Mktg. & Sales Practices Litig.* (N.D. Cal. 2011)
28 2011 WL 1877630, at *3 (approving settlement based upon, among other factors, the belief of “Plaintiffs’ counsel, who are experienced attorneys . . . that the settlement is extremely favorable to the class”).

1 31. In short, the Class Notice provides Class Members with all the necessary information to make an
2 informed decision.

3 **E. The Administrator's Fees Are Reasonable**

4 The Parties have selected Atticus to serve as Administrator. Atticus has substantial experience
5 in administration, having handled thousands of class action settlements. The Administrator's fees and
6 costs will be paid out of the GSA/QSF. The Administrator will, among other things, distribute the
7 Court-approved Class Notice, calculate Participating Class Members' shares, prepare and mail
8 settlement checks, respond to inquiries/disputes as appropriate, prepare requisite tax forms, and
9 generally perform all normal and customary duties associated with the administration of such
10 settlements. Plaintiff seeks preliminary approval of \$5,500 for the Administrator's fees and costs. VJK
11 Decl. ¶¶ 47-48.

12 **F. The Service Payments to Plaintiffs Are Reasonable**

13 "Courts routinely approve incentive awards to compensate plaintiffs for the services they
14 provided and the risks they incurred during the course of the class action litigation." *Ingram v. Coca-*
15 *Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (approving \$300,000 payment to each class
16 representative in employment action settling before certification).⁴ Factors used by courts in
17 determining the amount of the service payments include (1) a comparison between service awards and
18 the range of monetary recovery available to the class (*see Ingram*, 200 F.R.D. at 694; (2) time and
19 effort put into the litigation (*see Van Vranken*, 901 F. Supp. at 299); (3) whether the litigation will
20 further the public policy underlying the statutory scheme (*see Roberts*, 979 F. Supp. at 201 n.23); and
21 (4) risks of retaliation (*see Roberts*, 979 F. Supp. at 202). All factors support the \$3,000 in total in
22 service payments requested here. The sought payments are fair, reasonable and appropriate under the
23 circumstances of this case, including Plaintiffs' provision of a general release and Civil Code section
24 1542 waiver. Plaintiffs worked diligently with Class Counsel, including participating in multiple
25 interviews and calls with Plaintiffs' counsel, obtaining and providing documentation and vital
26

27 ⁴ *Roberts v. Texaco, Inc.* (S/D.N.Y. 1997) 979 F. Supp. 185 (approving incentive payments up to \$85,000 for
28 named plaintiffs in employment action settling before certification); *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901
F. Supp. 294, 300 (\$50,000 service payment for named plaintiff in class action).

1 information, and participating in mediation, should be rewarded for taking the initiative to pursue these
2 claims on behalf of the Class, and for their role in reaching a settlement providing tangible relief to the
3 Class, despite the substantial risks involved. VJK Decl. ¶¶ 49-52; Perez Decl., ¶¶ 2-16; Landaverde
4 Decl., ¶¶ 2-15.

5 **G. Class Counsel's Attorneys' Fees and Costs are Reasonable, Fair, and Appropriate**

6 Plaintiff is entitled to seek payment of attorneys' fees and costs. Cal. Lab. Code §§ 218.5,
7 226(e) (1), 1194, and 2699(g); *Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1427. In
8 conjunction with final approval, Plaintiff will seek a fee award under the common fund doctrine,
9 customarily used in awarding fees and costs in settlement of Labor Code class actions.⁵ Courts
10 ordinarily approve attorney's fees payments between one-third and forty percent in comparable wage
11 and hour class actions.⁶ Here, Plaintiff will seek attorney's fees of twenty percent of the MSA, or
12 \$11,000.00 and declared costs of up to \$16,000. To date, Class Counsel has spent over 178 hours in the
13 prosecution of this action and incurred \$15,817.96 in out-of-pocket costs. VJK Decl., ¶ 58. The Court
14 should approve providing notice to the Class of Class Counsel's fee and cost request.

15 **V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT.**

16 **A. The Legal Standard.**

17 A settlement class must meet the following criteria for certification: (1) the individuals in the
18 class are so numerous that joinder would be impractical; (2) there is a commonality of interest between
19 the plaintiff and the members of the class; (3) plaintiff's claims are typical of the claims of the class
20 members; and (4) plaintiff and his counsel will fully and adequately represent the interests of the class
21 members. Code. Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
22
23

24 ⁵ *Wershba*, 91 Cal.App.4th at 254; *Lealao v. Beneficial Cal.* (2000) 82 Cal.App.4th 19, 26-30; *Serrano v. Priest*
25 (1977) 20 Cal.3d 25, 34 (“[w]hen a number of persons are entitled in common to a specific fund, and an action brought by a
26 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may
27 be awarded attorney's fees out of the fund.”); see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer
28 who recovers for a common fund . . . is entitled to a reasonable attorney's fee from the fund as a whole.”); *Hanlon*, 150
F.3d. at 1029.

⁶ 4 NEWBERG § 14:6 (Studies show that “Fee awards in class actions average around one-third of the recovery”);
Williams v. MGM-Pathe Commc'ns Co. (9th Cir. 1997) 129 F.3d 1026, 1027 (33% fee award); *Wren*, 2011 WL 1230826, at
*29 (42% fee award in common fund wage and hour class action).

1 326-27; Fed. R. Civ. P. 23.⁷ All prerequisites to certification have been met for the proposed settlement
2 class.

3 **B. The Certified Class Is Ascertainable.**

4 The identity of each Class Member is ascertainable because all Class Members worked for
5 Defendant within California during the Class Period and can be identified through employee and
6 payroll records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932. With 68 individuals,
7 joinder is impractical.

8 **C. The Commonality Requirement Remains Met.**

9 Commonality is met if questions of law and fact that are common to the class predominate and
10 the theory of recovery is “amenable to class treatment.” *Sav-On Drug Stores*, 34 Cal.4th at p. 327;
11 *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033. The claims of Plaintiffs and each
12 of the Class Members flow from the same facts and legal claims. VJK Decl. ¶ 49. Common questions
13 predominate, including whether the truck drivers were legally entitled to overtime pay and/or subject to
14 California’s meal and rest break laws. All of the Class Members were truck driver employees subject
15 to uniform policies of Defendant’s and whose alleged underpayments flow from the same factual and
16 legal theories.

17 **D. The Typicality Requirement is Met**

18 Typicality is met if the claims of named representatives are typical of those of the class, though
19 “they need not be substantially identical.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
20 1020; *Sav-On Drug Stores, Inc.*, 34 Cal.4th at p. 326. Plaintiffs’ claims are typical of the claims of
21 every Class Member because they arise from the same factual bases, policies and procedures, and legal
22 theories. *Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Were Plaintiffs not serving as
23 Class Representatives, they would be members of the Class. VJK Decl. ¶ 49.

24 ///

25 ///

27 ⁷ The California Supreme Court has authorized California’s trial courts to use Federal Rule of Civil Procedure 23
28 and cases applying it for guidance in considering class issues. See *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 821; *Green v.*
Obledo (1981) 29 Cal.3d 126, 145-146. Where appropriate, federal case law will be cited in addition to California law.

1 **E. The Adequacy Requirement is Met.**

2 Adequacy exists if the named representative and counsel have no interests adverse to those of
3 the Class Members and are committed to vigorously prosecuting the case on behalf of the class.
4 *Hanlon*, 150 F. 3d at 1020; *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450-51. Plaintiffs’
5 interests in prosecuting this matter and obtaining the most beneficial recovery practicable fully
6 comports with the collective interests of each respective Class Member. There are no conflicts between
7 Plaintiffs and the other Class Members, and Plaintiffs are members of the Class. *Hanlon*, 150. F 3d at
8 1021. Moreover, any Class Member who wishes to opt-out and/or object to the Settlement will have
9 the opportunity to protect his/her individual interest by doing so. *Hanlon, supra*, 150. F.3d 1021.

10 Plaintiffs and Class Counsel have demonstrated their commitment to vigorously prosecuting
11 this lawsuit on behalf of the Class, as demonstrated by Class Counsel’s experience in wage and hour
12 cases and the tangible benefits they have and will continue to confer upon Class Members, including
13 securing the Class Settlement Amount of \$55,000, which benefits Class Members. VJK Decl. ¶¶ 54-
14 58.

15 **VI. A FINAL APPROVAL HEARING SHOULD BE SET**

16 Plaintiff requests the Court set a date for hearing on a motion for final approval as well as a
17 motion for fees, costs, and enhancement payments, deadlines for Class Members to opt-out, object, and
18 for the submission of associated moving papers. For sufficient time to mail the Class Notice and for
19 Class Members to decide how they wish to proceed, Plaintiffs request that the date for the final
20 approval hearing be set not less than 115 days after preliminary approval.

21 **VII. CONCLUSION**

22 For all the reasons stated above, Plaintiffs’ Motion for Preliminary Approval of Class Action
23 and PAGA Settlement should be granted.

24
25 **DATED:** July 12, 2024

MAYALL HURLEY P.C.

26
27 By _____

ROBERT J. WASSERMAN

VLADIMIR J. KOZINA

Attorneys for Plaintiffs and the Putative Class