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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEON GENTRY and DEON GENTRY, JR.,
as individuals and on behalf of all others
similarly situated,

Plaintiffs,

vs.

PINNACLE DRIVEAWAY, INC., a Wyoming
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVSB2314325

*[Assigned for All Purposes to Hon. Jessica
Morgan, Dept. S-26]*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: January 10, 2025
Time: 9:00 a.m.
Dept.: S-26

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that pursuant to Rule 3.769 of the California Rules of Court, on
3 January 10, 2025 at 9:00 a.m. in Department S-26 of the above-entitled Court, located at 247 W 3rd St.,
4 San Bernardino, California 92408, Plaintiffs Deon Gentry and Deon Gentry, Jr. (collectively,
5 “Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will and hereby do
6 move this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
9 of the following Settlement Class defined as follows:

10 All current and former drivers classified by Defendant Pinnacle Driveaway, Inc.
11 as independent contractors during the Class Period and: (i) who drove more than
12 50% of their miles within California; and/or (ii) who did not drive a majority of
miles in any single state but were assigned to a California terminal.

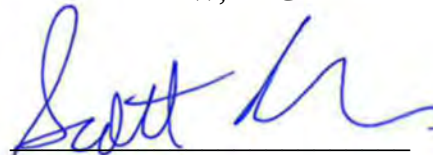
- 13 3. For purposes of the Settlement, the “Class Period” shall mean the time period between June
14 23, 2019 through June 30, 2024.
15 4. Preliminary appointment of Plaintiffs Deon Gentry and Deon Gentry, Jr. as Class
16 Representatives;
17 5. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and
18 Paul K. Haines of Haines Law Group, APC as Class Counsel;
19 6. The scheduling of a hearing to consider whether the Settlement should be finally approved
20 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
21 payable to the California Labor Workforce Development Agency, and attorneys’ fees and
22 costs to Class Counsel;
23 7. Appointment of Phoenix Settlement Administrators (“Phoenix”) as the third-party
24 Settlement Administrator for mailing notices; and
25 8. Approval of the proposed Notice Packet (which is comprised of the Notice of Pendency of
26 Class Action and Proposed Settlement and Notice of Individual Settlement Award) and an
27 order that it be disseminated to the proposed Settlement Class Members as provided in the
28 Settlement Agreement.

1 This Motion is based on this notice of motion, the memorandum of points and authorities, the
2 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Deon Gentry, Plaintiff Deon
3 Gentry, Jr., and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached
4 thereto, the pleadings and other papers filed in this action, and on any further oral or documentary
5 evidence or argument presented at the time of hearing.

6
7 Dated: August 29, 2024

Respectfully submitted,
LIDMAN LAW, APC

8
9
10 By:



11 Scott M. Lidman
12 Attorneys for Plaintiffs
13 DEON GENTRY and DEON GENTRY, JR.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Deon Gentry and Deon Gentry, Jr. (collectively, “Plaintiffs”) brought this class and
4 representative action against Defendant Pinnacle Driveaway, Inc. (hereinafter referred to as “Pinnacle” or
5 “Defendant”) alleging various wage and hour violations. Plaintiffs’ primary allegations are that Defendant
6 misclassified them and other drivers as independent contractors and, as a result: (1) failed to pay all
7 minimum wages owed; (2) failed to provide accurate, itemized wage statements; (3) failed to reimburse
8 all business expenses; (4) made unlawful deductions from wages; (5) failed to timely pay all wages upon
9 separation of employment; (6) engaged in unlawful business practices; and (7) is liable for civil penalties
10 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Defendant have agreed to pay \$375,000.00 to the following Settlement
13 Class:

14 All current and former drivers classified by Defendant Pinnacle Driveaway, Inc. as
15 independent contractors during the Class Period and: (i) who drove more than 50%
16 of their miles within California; and/or (ii) who did not drive a majority of miles in
any single state but were assigned to a California terminal.

17 For purposes of the Settlement, the “Class Period” shall mean the time period
18 between June 23, 2019 and June 30, 2024.

19 Settlement Class members do not need to file a claim and will automatically receive a payment
20 unless they affirmatively opt-out. After deducting administration costs, Plaintiffs’ service awards,
21 attorneys’ fees and costs, and PAGA civil penalties, the remaining Net Settlement Amount (“NSA”) of
22 approximately \$187,000.00 will be distributed to all Settlement Class members who do not opt-out. With
23 approximately 300 Settlement Class members, the average payment to each Settlement Class member is
24 currently expected to be approximately **\$623.33**, which does not include the \$5,000.00 PAGA Amount to
25 the PAGA Employees.

26
27 ¹ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott M. Lidman as
28 Exhibit 1. The proposed Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement
and Notice of Individual Settlement Award) is attached to the Settlement as Exhibit B. All defined terms in this motion have
the same definitions as used in the Settlement.

1 This proposed Settlement is well-within the range of possible approval in light of the significant
2 legal and factual obstacles that Plaintiffs faced, the risks and costs of further litigation, and the tangible
3 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiffs
4 respectfully request that the Court grant preliminary approval of the Settlement.

5 **II. SUMMARY OF THE LITIGATION**

6 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH**
7 **NEGOTIATIONS**

8 **1. The Parties**

9 Pinnacle Driveaway is a non-forced dispatched operation that has independent contractor drivers
10 deliver utility trucks, buses and other vehicles from manufacturers to dealers or customers, across the USA
11 and Canada. Pinnacle Driveaway has locations in Pennsylvania, Tennessee, Indiana, Texas, Connecticut,
12 Minnesota and California. See Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. Plaintiff Deon
13 Gentry, a former driver for Defendant who was classified as an independent contractor, provided services
14 to Defendant from approximately 2021 to around August 3, 2023. See Declaration of Deon Gentry
15 (“Gentry Decl.”), ¶ 2. Plaintiff Deon Gentry, Jr., a former driver for Defendant who was classified as an
16 independent contractor, provided services to Defendant from approximately 2020 to around February
17 2023. See Declaration of Deon Gentry, Jr. (“Gentry, Jr. Decl.”), ¶ 2.

18 **2. Procedural History**

19 On June 23, 2023, Plaintiffs filed the instant putative class action complaint against Defendant in
20 San Bernardino County Superior Court alleging the following class action claims against Defendant: (a)
21 failure to pay all minimum wages owed; (b) failure to provide accurate, itemized wage statements; (c)
22 unlawful deductions from wages; (d) failure to reimburse all business expenses; (e) failure to pay all wages
23 upon termination of employment; and (f) unfair business practices. Lidman Decl., ¶ 10.

24 After having exhausted his administrative remedies with the California Labor & Workforce
25 Development Agency (“LWDA”) by way of a letter submitted to the LWDA on June 22, 2023, on August
26 28, 2023, Plaintiff filed a First Amended Complaint which added a cause of action seeking civil penalties
27 under the California Labor Code Private Attorney General Act (“PAGA”). *Id.*

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3. Discovery

After agreeing to participate in private mediation, Defendant informally produced documents and information relevant to the claims alleged in advance of mediation, including without limitation the relevant independent contractor agreement, data regarding the amount of deductions made from payments to the class members, data regarding miles driven by the class members, data regarding pay rates and amount, the number of settlement statements provided during the relevant class and PAGA periods, as well as financial documents and information regarding Defendant's financial status. Lidman Decl., ¶ 11. After a review and analysis of the documents and information produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiffs' claims and Defendant's defenses thereto, if a settlement could not be reached. *Id.*

4. Arms-Length Negotiations

In light of Defendant's financial status, the Parties selected former U.S. Bankruptcy Judge and current mediator, Hon. Mitchell Goldberg, as he could assist the Parties in evaluating Defendant's financial status and ability to pay a settlement and/or eventual judgment. Lidman Decl., ¶ 12. After Defendant shared in advance of mediation various financial documents to Judge Goldberg and participated in several conference calls, on June 14, 2024, a mediation was held. *Id.* During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, the legal basis for the claims and defenses, and Defendant's financial stability. *Id.* Ultimately, through a mediator's proposal, the Parties agreed on a class-wide resolution. In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement ("Settlement"). *Id.*

III. ARGUMENT

A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322 requires trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable").

As explained below, the Settlement Class satisfies the criteria for certification of a settlement class under California law because: (1) the Settlement Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiffs' claims are typical of the claims of absent Settlement Class Members; and (4) Plaintiffs and their counsel will fairly and adequately represent Settlement Class Members' interest. See Cal. Civ. Proc. § 382.

1. Numerosity is Satisfied.

Here, there are approximately 300 Settlement Class Members. Therefore, numerosity is satisfied. See Lidman Decl., ¶¶ 13-14; See, e.g., *Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." See *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Settlement Class is defined as "All current and former drivers classified by Defendant Pinnacle Driveaway, Inc. as independent contractors during the Class Period and: (i) who drove more than 50% of their miles within California; and/or (ii) who did not drive a majority of miles in any single state but were assigned to a California terminal." For purposes of this Settlement Agreement, the "Class Period" shall mean the time period between June 23, 2019 and June 30, 2024. Lidman Decl., ¶ 14.

In addition, PAGA Employees is defined as: "All current and former drivers classified by Defendant Pinnacle Driveaway, Inc. as independent contractors during the PAGA Period and: (i) who drove more than 50% of their miles within California; and/or (ii) who did not drive a majority of miles in any single state but were assigned to a California terminal." For purposes of this Settlement Agreement, the "PAGA Period" shall mean the time period between June 23, 2022 and June 30, 2024. *Id.*

2. Commonality is Satisfied.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. See *Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327. Here, Settlement Class Members' claims arise from Defendant's common, uniform policies and practices that applied to Plaintiffs and Settlement Class Members during the class period. Lidman Decl., ¶ 15. As a result of the common and uniform policies and practices that

1 applied to all Settlement Class Members, their claims involve common questions of law and fact,
2 including but not limited to:

- 3 1. Whether Defendant properly classified its drivers as independent contractors;
- 4 2. Whether Defendant properly paid all minimum wages;
- 5 3. Whether Defendant failed to furnish accurate, itemized wage statements;
- 6 4. Whether Defendant failed to reimburse all necessary business expenses;
- 7 5. Whether Defendant made unlawful deductions from amounts owed;
- 8 6. Whether Defendant failed to timely pay all wages owed upon separation; and
- 9 7. Whether Defendant' conduct constituted unlawful and/or unfair business practices.

10 These alleged practices result in common questions as to the affected Settlement Class Members.
11 See e.g., *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

12 **3. Typicality is Satisfied.**

13 The typicality requirement is satisfied where class representatives have claims that are typical of
14 those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
15 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
16 in a consumer class action).

17 Here, Plaintiffs' claims are typical of those held by the Settlement Class. First, Plaintiffs were
18 classified by Defendant as independent contractor drivers during the Class Period and were subject to
19 Defendant's wage and hour policies at issue in this case. See Gentry Decl., ¶ 2; Gentry, Jr. Decl., ¶ 2.
20 Second, Plaintiffs were injured by the same challenged policies that injured the Settlement Class as a
21 whole. For example, Plaintiffs assert that they, like the Settlement Class, were misclassified as
22 independent contractors and, as a result, were not paid all legally required minimum wages, were not
23 provided with accurate, itemized wage statements, were not reimbursed for all necessary business
24 expenses, were the subject of unlawful deductions, and were not paid all of their wages owed upon
25 separation of employment. *Id.* Given that Defendant's policies and practices applied to all of the
26 independent contractor drivers, Settlement Class Members possess a similar interest and have suffered
27 similar alleged injuries as Plaintiffs. Accordingly, because Plaintiffs' claims and those of the Settlement
28 Class all arise from the same conduct, typicality is satisfied.

1 **4. Adequacy is Satisfied.**

2 The adequacy requirement examines conflicts of interest between named parties and the class(es)
3 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
4 Cal.App.4th 676, 697.

5 Here, there are no apparent conflicts of interest between Plaintiffs and the Settlement Class they
6 seek to represent. *See* Gentry Decl., ¶ 14; Gentry, Jr. Decl., ¶ 14. Indeed, Plaintiffs’ interests are aligned
7 with those of the Settlement Class Members, as they all seek monetary relief under the same facts and
8 legal theories. *Id.* Additionally, Class Counsel does not have any conflict of interest with the Settlement
9 Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where
10 there was no indication that Class Counsel were not qualified and the named plaintiff had no interests
11 antagonistic to those of the proposed class).

12 Further, Class Counsel also have extensive experience in wage and hour class action litigation and
13 have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Declaration of Paul K. Haines (“Haines
14 Decl.”), ¶¶ 2-8; Declaration of Milan Moore (“Moore Decl.”), ¶¶ 2-4.

15 **B. THE PROPOSED CLASS ACTION SETTLEMENT IS FAIR, ADEQUATE, AND**
16 **REASONABLE**

17 Settlement is the preferred means of dispute resolution, particularly in complex class action
18 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
19 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*
20 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the
21 Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of an
22 experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168
Cal.App.4th 116, 130.

23 **1. The Preliminary Approval Standard is Met**

24 To make a fairness determination, the Court should consider several factors, including: “the
25 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk
26 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
27 completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford*
28 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to
engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*

1 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. The Settlement is fair, adequate, and reasonable
2 in light of the overall balance of factors in this case for the following reasons.

3 **a. The Strength of Plaintiffs' Case**

4 Although Plaintiffs maintain that their claims are meritorious, they acknowledge there were
5 substantial risks and uncertainty in proceeding with litigation. As described below, Defendant presented
6 multiple defenses to Plaintiffs' claims, both on the merits and class certification. Thus, while Plaintiffs
7 were prepared to litigate these claims through certification and trial, success was not certain.

8 **b. Risk, Expenses, Complexity, and Duration of Further Litigation**

9 Although the parties engaged in informal discovery throughout this action, the parties still had
10 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 29.
11 Moreover, Plaintiffs still had to file for class certification, and faced the prospect of appeals in the wake
12 of a disputed class certification ruling for Plaintiffs and/or an adverse summary judgment ruling. *Id.* Even
13 if the classes sought to be certified by Plaintiffs were in fact certified, the parties would incur considerably
14 more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id.*
15 This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary
16 approval.

17 **c. Risk of Maintaining Class Action Status**

18 Plaintiffs had not yet filed their motion for class certification and as such, the extent to which
19 Plaintiffs' proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk
20 that there would not be a certified class at the time of trial.

21 **d. Overview of the Settlement Agreement**

22 If the Court approves this Settlement, Defendant will pay a Gross Settlement Amount ("GSA") of
23 \$375,000.00.² Lidman Decl., ¶ 13, Exh. 1 (Settlement, ¶ 4). Significantly, this Settlement is **non-**
24 **reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement
25 Award. *Id.* (Settlement, ¶ 5). Each Settlement Class member will automatically receive a Settlement
26 Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement

27 ² Defendant represents that there are an estimated 300 Class Members during the Class Period. If the number of Class Members
28 during the Class Period is more than 10% greater than this figure (i.e., if there are 331 or more Class Members during the Class
Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase
in the number of workweeks worked during the Class Period by Class Members, Defendant will increase the Gross Settlement
Amount by 11%). See Settlement ¶ 4.E.

are summarized below:

Gross Settlement Amount (“GSA”):	\$375,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$125,000.00
Minus Court-approved, verified costs (up to):	\$25,000.00
Minus Court-approved Class Representative Service Awards (up to \$7,500 each):	\$15,000.00
Minus Settlement Administration Costs:	\$8,000.00
Minus PAGA civil penalties:	\$20,000.00
Net Settlement Amount (“NSA”):	\$187,000.00

The Gross Settlement Amount shall be deposited by Defendant into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class members and PAGA Employees. Defendant agrees to deposit the Gross Settlement Amount and the required employer-side taxes with the Settlement Administrator within thirty (30) calendar days after the “Effective Date” which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or all appeals have been dismissed; or (c) the final resolution overruling any objection and denying the basis of any appeal that has been filed. Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 4.B).

After deducting amounts for the Court-approved attorneys’ fees and verified costs, Service Awards to Plaintiffs, Settlement Administrator costs, and the PAGA civil penalties, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least **\$187,000.00** to all Settlement Class Members who do not timely opt out. This amount does not include the \$5,000.00 PAGA Amount to be paid to the PAGA Employees. Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 5.A).

The Individual Settlement Awards shall be determined as follows:

- i. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of trips worked as an independent contractor driver during the Class Period that either began or ended in California, the numerator of which is the Settlement Class member’s total trips worked as an independent contractor driver during the Class Period that either began or ended in California, and the denominator of which is the total trips worked as independent contractor

1 drivers by all Settlement Class members (who do not opt out) who worked during the Class
2 Period that either began or ended in California. See Settlement, ¶ 5.B.i.

- 3 ii. PAGA Amount: Five Thousand Five Hundred Dollars and Zero Cents (\$5,000.00) of the
4 Gross Settlement Amount has been designated as the “PAGA Amount” as described above.
5 Each PAGA Employee shall receive a portion of the PAGA Amount proportionate to the
6 number of trips that he or she worked during the PAGA Period which will be calculated
7 by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA
8 Employee’s number of trips worked as a non-exempt employee during the PAGA Period
9 that either began or ended in California, and the denominator of which is the total number
10 of trips worked by all PAGA Employees that either began or ended in California. The
11 payments to PAGA Employees shall be reported as penalties on a Form 1099. See
12 Settlement, ¶ 5.C.

13 According to Defendant, there are approximately 300 total Settlement Class Members. Lidman
14 Decl., ¶ 14. Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is projected
15 to be approximately **\$623.33, exclusive of any PAGA civil penalties.** *Id.*

16 Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice
17 to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without
18 unduly delaying the Settlement. See Settlement, ¶ 10.C.-D. Those Settlement Class Members who do not
19 opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included
20 within the Settlement, for the period between June 23, 2019 and June 30, 2024. See Settlement, ¶ 3.
21 Settlement Class Members who opt-out of Settlement will still receive a portion of the PAGA Amount if
22 they are a PAGA Employee during the PAGA Period.

23 As this is a non-reversionary Settlement, 100% of the NSA shall be consumed in that if a
24 Settlement Class Member opts-out of the Settlement, the portion allocated to the individual who opts-out
25 shall be added to the NSA and redistributed and allocated to the Settlement Class Members who did not
26 opt-out. See Settlement, ¶ 4.C.

27 **e. The Parties Engaged in Fair and Honest Negotiations.**

28 This Settlement was a result of serious, informed, non-collusive negotiations with the assistance
of a mediator. After the detailed review of the information, data and other documents and policies
produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the
strengths and weaknesses of Plaintiffs’ case. Lidman Decl., ¶¶ 11-12. This discovery allowed the parties
to assess the merits and value of Plaintiffs’ claims and Defendant’s defenses thereto, if a settlement could
not be reached. *Id.*

1 In light of Defendant's financial status, the Parties selected former U.S. Bankruptcy Judge and
2 current mediator, Hon. Mitchell Goldberg, as he could assist the Parties in evaluating Defendant's
3 financial status and ability to pay a settlement and/or eventual judgment. Lidman Decl., ¶ 12. After
4 Defendant shared in advance of mediation various financial documents to Judge Goldberg and
5 participated in several conference calls, on June 14, 2024, a mediation was held. *Id.* During mediation,
6 the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs'
7 claims, the legal basis for the claims and defenses, and Defendant's financial stability. *Id.* Ultimately,
8 through a mediator's proposal, the Parties agreed on a class-wide resolution. In the weeks that followed,
9 the parties finalized the terms of the Settlement.

10 Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of:
11 factual investigation and data analysis; the exchange of substantial information and class data, including
12 timekeeping and payroll records; financial information, wage and hour policies and practices; arm's
13 length negotiations by counsel; and mediation before an experienced wage and hour class action
14 mediator. *See* Lidman Decl., ¶¶ 11-12; *See Kullar, supra*, 168 Cal.App.4th at 130. Thus, these factors
15 support preliminary approval.

16 Further, there are no deficiencies in the Settlement. The Settlement does not grant preferential
17 treatment to the class representative or segments of the class, and is within the range of possible approval,
18 as discussed in detail below. The Settlement will provide monetary relief to Settlement Class Members.
19 The amounts proposed for Class Counsel's attorneys' fees and costs, and service award are all reasonable
20 and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies,
21 this factor supports preliminary approval.

22 **f. Amount Offered in Settlement Given Realistic Value of Claims**

23 Unpaid Minimum Wages: Plaintiffs allege that Defendant failed to compensate its non-exempt
24 employees for all time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges that Defendant failed
25 to account for unproductive time spent not actually driving. *Id.* As a result, Plaintiffs contend that
26 Defendant failed to pay them and other independent contractor drivers for all minimum wages owed. *Id.*

27 Defendant contends that it compensated Settlement Class members for all of their time worked,
28 as they were paid per trip which included each and every activity and minute they spent performing their

1 jobs. *Id.* Defendant further asserts that Plaintiff would be unable to certify an unpaid wages class given
2 the individualized inquiries that would be required. In light of these defenses and evaluation of the
3 applicable law, Plaintiff discounted the maximum exposure on this claim to 0. *Id.*

4 Wage Statement Violations: Plaintiffs further allege that Defendant issued inaccurate wage
5 statements in violation of Labor Code § 226. Lidman Decl., ¶ 17. Specifically, Plaintiffs contend that
6 because they were misclassified as independent contractors, the pay statements they received did not fully
7 comply with Labor Code § 226(a). *Id.* Therefore, Plaintiffs calculated Defendant’s maximum exposure
8 for wage statement violations at \$205,847.00 (based on the 2,212 settlement statements issued during the
9 relevant time period and applying \$50 for the first violation and \$100 for each subsequent violation. *Id.*

10 Defendant argues that its alleged wage statement violations could not be shown to be “knowing
11 and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result
12 of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.
13 Lidman Decl., ¶ 18. As such, Plaintiff discounted the calculated exposure by 20% for a risk of non-
14 certification and an additional 20% for a risk of being unsuccessful on the merits to arrive at an estimated
15 total of \$131,742.08. *Id.*

16 Waiting Time Penalties: Plaintiffs allege that Defendant is also liable for waiting time penalties
17 under Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
18 Lidman Decl., ¶ 19. Based on the data provided by Defendant, there were approximately 255 Settlement
19 Class Members who separated their employment with Defendant during the relevant time period who could
20 be entitled to waiting time penalties. *Id.* Therefore, Plaintiffs calculated Defendant’ maximum exposure
21 for waiting time penalties at approximately \$4,538,160 (255 separated employees x \$63.03 x 8 hrs a shift
22 x 30 days). *Id.*

23 Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith
24 disputes as to Plaintiffs’ underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 20. *See*
25 *also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of
26 waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith
27 dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested
28 wages owed). Defendant also asserts that the exposure is highly inflated because work for the drivers was

1 very intermittent such that they did not regularly work, and that the hourly rate is also highly inflated. *Id.*
2 Accordingly, Plaintiffs discounted the maximum exposure by 45% for the risk of non-certification, and an
3 additional 65% to account for Defendant's defenses on the merits to arrive at an estimated exposure of
4 approximately \$873,595.80. *Id.*

5 Unreimbursed Business Expenses/Unlawful Deductions: Plaintiffs allege that Defendant required
6 its employees to incur certain business expenses and/or had deductions taken from their pay to cover
7 expenses. Lidman Decl., ¶ 21. Plaintiffs further allege that Defendants knew or should have known that
8 Plaintiffs and the other drivers were necessarily incurring expenses due to their classification as
9 independent contractors. *Id.*

10 Plaintiffs estimate based on the information provided by Defendant that approximately
11 \$100,000.00 were made in total deductions for all class members. *Id.* Plaintiffs further estimate that each
12 class member incurred approximately \$500 in additional expenses that should have been reimbursed.
13 Thus, Plaintiffs calculate exposure on this claim at approximately \$250,000.00. *Id.*

14 Defendant contends that despite any deduction, the class members received significantly more than
15 minimum wage such that there can be no liability since it is a matter of contract. Lidman Decl., ¶ 22.
16 Defendant further contends that any purportedly necessary expenses incurred by drivers were minimal. *Id.*
17 Accordingly, Plaintiff discounted the maximum exposure on this claim by 10% for the risk of non-
18 certification, and an additional 35% to account for Defendant's defenses on the merits and financial
19 condition, to arrive at an estimated exposure of \$146,250.00.

20 PAGA Civil Penalties: Plaintiffs also seek civil penalties under the PAGA as a result of the
21 foregoing alleged Labor Code violations, including the misclassification itself. Lidman Decl., ¶ 23.
22 Pursuant to Labor Code section 226.8(a) and (b), Plaintiffs calculated Defendant's civil penalty exposure
23 for misclassifying the drivers as independent contractors at a rate of \$5,000 for each violation, applied to
24 each of the 300 drivers. *Id.* Thus, the exposure was calculated to be \$1,500,000.00.

25 Defendant argues that Plaintiffs' PAGA claim will fail for the same reasons that his underlying
26 claims will fail. Lidman Decl., ¶ 24; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147
27 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").
28 Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to

1 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims.
2 See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
3 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
4 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).
5 *Id.* Therefore, Plaintiffs discounted the maximum exposure figure by 15% for a risk of being unsuccessful
6 on the merits, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive
7 at an estimated exposure of approximately \$510,000.00. *Id.*

8 **g. The Settlement Is Within the Range of Possible Approval**

9 Using these estimated figures for each of the claims described above, Plaintiffs predicted the
10 realistic total recovery for the Settlement Class would be approximately \$1,661,587.88. Lidman Decl., ¶
11 25. The proposed settlement of \$375,000.00 therefore represents approximately 22.6% of the reasonably
12 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
13 will provide tangible monetary relief to Settlement Class Members.

14 The proposed settlement reflects approximately 22.6% of the estimated recovery the Settlement
15 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
16 monetary compensation for disputed claims. Indeed, the percentage of the liability exposure recovered
17 in this case exceeds percentages routinely approved by courts. See, e.g., *Glass v. UBS Finan. Servs.*
18 (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing
19 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
20 settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
21 *Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be
22 acceptable even though it amounts to only a fraction of the potential recovery that might be available to
23 the Settlement Class members at trial"). Thus, Plaintiffs submit the settlement is within the range of
24 possible approval, such that notice should be provided to the Settlement Class so that they can consider
25 the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement
26 after the Settlement Class has had the opportunity to opt-out or object.

27 **h. The Experience and Views of Counsel**

28 "Parties represented by competent counsel are better positioned than courts to produce a

1 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
2 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent,
3 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
4 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*;
5 Lidman Decl., ¶¶ 2-8; Moore Decl., ¶¶ 2-5; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
6 review of Defendant’s policies and timekeeping and payroll records and drew on their extensive
7 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Lidman Decl.,
8 ¶¶ 11-12. The Settlement was also reached with the assistance of an experienced and respected wage and
9 hour class action mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See*
10 *Kullar, supra*, 168 Cal.App.4th at 130.

11 **i. Attorneys’ Fees and Costs**

12 California courts recognize an appropriate method for awarding attorneys’ fees in class actions is
13 to award a percentage of the “common fund” created as a result of a settlement. *See e.g., Laffitte v. Robert*
14 *Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund method survives in California
15 class action cases”). Class Counsel’s request for fees of one-third of the GSA is well within the range of
16 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,
17 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the
18 case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

19 Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which
20 is currently estimated to be \$125,000.00, and up to \$25,000 in verified costs reimbursement. *See*
21 Settlement, ¶ 4.C.(4); Lidman Decl., ¶ 26. Plaintiffs submit the requested fee is fair compensation for
22 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
23 *Id.* Further, Plaintiffs have provided written approval of the split of attorneys’ fees in this action. Lidman
24 Decl., ¶ 27. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
25 analyzing Plaintiffs’ claims, conducting legal research, reviewing Defendant’s documents and policies,
26 analyzing Settlement Class Members’ timekeeping data and payroll records, preparing for and attending
27 mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise
28 litigating the case. Lidman Decl., ¶ 26. Class Counsel expect to expend additional attorney time in

1 attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement
2 Class Members, preparing the final approval papers and attending the Final Approval hearing. *Id.*

3 Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall
4 percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely
5 positive results obtained for the class, and the efficiency with which the Parties conducted the litigation.
6 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and
7 verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar
8 analysis.

9 **j. Administration Costs**

10 Phoenix Settlement Administrator's fees and expenses are estimated not to exceed \$8,000.00. *See*
11 Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed
12 concurrently herewith ("Lawrence Decl."). This includes sending the Notice in English only as translation
13 is not necessary in this case based on Defendant's workforce. This request is reasonable in light of the
14 proposed class size of approximately 300 Settlement Class Members and the costs and expenses associated
15 with administering the notices in English and distributing the awards.

16 **k. Class Representative Service Awards**

17 "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class
18 representatives for work done on behalf of the class [and] to make up for financial or reputational risk
19 undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
20 1393-94. Here, as part of the Settlement, Plaintiffs will separately apply for a service award at the time
21 of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 each for their
22 services to the Settlement Class. Lidman Decl., ¶ 28; Settlement, ¶ 4.C.3; Gentry Decl., ¶¶ 9-15; Gentry,
23 Jr. Decl., ¶¶ 9-15. As will be fully briefed at the time of final approval, Plaintiffs' requested service awards
24 are intended to recognize the time and effort Plaintiffs expended on behalf of the Settlement Class,
25 including providing substantial factual information and documents to Class Counsel, attending multiple
26 meetings with Class Counsel to discuss the claims and theories at issue in the litigation, participating in
27 the mediation, as well as the significant risks Plaintiffs undertook by agreeing to serve as the named
28 plaintiffs in this case, the fact that Plaintiffs have agreed to a general release of all claims subject to a

waiver of Civil Code § 1542. See Lidman Decl., ¶ 40; Gentry Decl., ¶¶ 9-15; Gentry, Jr. Decl., ¶¶ 9-15; Settlement ¶ 3.E.

I. PAGA Civil Penalties

The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$15,000.00. Settlement ¶ 4.C.5. This \$20,000.00 represents roughly 5.3% of the \$375,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by Courts. See, e.g., *In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

m. Tax Treatment of Settlement Awards

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Any portion of each Settlement Award that is provided for the PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as penalties, and eighty percent (80%) of each Settlement Award shall be allocated as expense reimbursements. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms 1099 for the amounts allocated as penalties, interest, and reimbursement. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. None of the amounts will be treated as wages or require issuance of an IRS Form W-2 because Plaintiff’s analysis revealed the absence of unpaid wages while the liability in this case was penalties and reimbursement. Further, because there has been no legal adjudication that the Settlement Class members were in fact employees rather than independent contractors, and were always paid as independent contractors by Defendant, it would be highly difficult to pay the Settlement Award as typical wages to an employee.

1 **n. Uncashed Funds**

2 The Settlement provides that Settlement Class Members with 180 days from the date the
3 Settlement Administrator mails the checks and any funds remaining after 180 days be transferred to the
4 California Secretary of State-Unclaimed Property Fund under the unclaimed property laws in the name
5 of the Settlement Class member. Settlement ¶ 5.F. As all settlement funds will be distributed to the
6 Settlement Class Members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

7 **C. SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

8 Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies.
9 The Settlement will provide monetary relief to participating Settlement Class Members. The amounts
10 proposed for Class Counsel’s attorneys’ fees and costs, and service award are all reasonable and
11 appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this
12 factor supports preliminary approval.

13 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**
14 **TO SETTLEMENT CLASS MEMBERS**

15 Before the final approval hearing, the Court requires adequate notice of the settlement be given
16 to all class members. This Court should order distribution to the Settlement Class of the proposed Notice
17 Packet (which is comprised of the Notice of Pendency of Class Action and Proposed Settlement and
18 Notice of Individual Settlement Award) by first-class regular U.S. Mail, postage prepaid, using last
19 known mailing address information provided by Defendant. *See* Settlement, ¶ 10, Exh. B. The Notice
20 Packet will be mailed in English due to the nature of Defendant’s workforce which does not require
21 translation into any other language.

22 This manner of giving notice is the “best notice practicable” under the circumstances because it
23 provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen*
24 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiffs propose that the Settlement be
25 administered by Phoenix, an experienced class action settlement administrator. *See generally* Lawrence
26 Decl. and attached exhibits. Class Data will be ascertainable through Defendant’s personnel and payroll
27 records, which Defendant will provide to Phoenix within 10 business days of preliminary approval of the
28 Settlement. *See* Settlement ¶ 10.A. Within 10 business days of receipt of the Settlement Class Members’

addresses, Phoenix will run the names of all Settlement Class Members through the United States Postal Service Notice of Change of Address database (which provides updated addresses for any individual who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding address), calculate the estimated Settlement Award for each Settlement Class member, and mail the notices to Settlement Class Members. See Settlement ¶ 10.B. To the extent that any notices are returned, Phoenix will perform a “skip trace” to track any Class Member’s current mailing address. See Settlement ¶ 10.F.

The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it advises Settlement Class Members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. See Lidman Decl., Exh. 1 (Settlement, Exh. B). The proposed Notice Packet will also notify Settlement Class Members of the final approval hearing date and provides Settlement Class Members the contact information for Class Counsel, and advises Settlement Class Members that they may enter an appearance through counsel if they wish to.

Additionally, as stated in the proposed Notice Packet, any changes to the Final Approval hearing date, time, or location will be posted on the Settlement Administrator’s website. *Id.* Furthermore, the Settlement Administrator will post the notice of final judgment on its website. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

E. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class Members must file objections to the Settlement or opt-out. See California Rule of Court 3.769.

IV. CONCLUSION

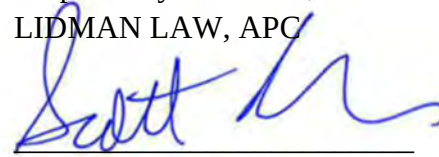
For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting

1 Preliminary Approval of Class Action Settlement submitted concurrently herewith.

2
3
4 Dated: August 29, 2024

Respectfully submitted,
LIDMAN LAW, APC

5
6 By:



Scott M. Lidman
Attorneys for Plaintiff
DEON GENTRY and DEON GENTRY, JR.