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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEANDRE PIERCE, on behalf of himself, all others similarly situated, and on behalf of the general public,

Plaintiff,

v.

QUALITY DRIVE AWAY, INC., an Indiana corporation; and DOES 1-100, inclusive,

Defendants.

Case No. CIVSB2313410
[Consolidated with Case. No. CIVSB2322025]

Assigned for all purposes to Hon. Joseph T. Ortiz, Dept. S17

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVES' SERVICE AWARDS, AND ATTORNEYS' FEES AND COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: December 15, 2026
Time: 1:30 p.m.
Dept.: S-17

DEON GENTRY and DEON GENTRY, JR., as individuals and on behalf of all other Aggrieved Employees,

Plaintiffs,

v.

QUALITY DRIVE AWAY, INC., an Indiana corporation; and DOES 1 through 100, inclusive,

Defendants.

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on December 15, 2026 at 1:30 p.m. in Department S-17 of the above-entitled Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Deandre Pierce and Plaintiff Deon Gentry, Jr. (together, "Plaintiffs"), individually and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Confirmation of the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirmation of the appointment of Plaintiff Deandre Pierce and Plaintiff Deon Gentry, Jr. as Class Representatives for settlement purposes;
3. Confirmation of the appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC; Paul K. Haines of Haines Law Group; and David Mara and Carter Cordura of Mara Law Firm, PC as Class Counsel for settlement purposes;
4. The granting of final approval of the Stipulation of Class Action and PAGA Settlement (herein "Settlement");
5. Approval of an award of $700,000.00 in attorneys' fees to Class Counsel;
6. Approval of an award of $44,504.40 in costs to Class Counsel;
7. Approval of an award of $11,175.00 in costs to Phoenix Settlement Administrators for its settlement administration services;
8. Approval of an incentive payment of $20,000.00 to Plaintiff Deandre Pierce for his services as Class Representative;
9. Approval of an incentive payment of $20,000.00 to Plaintiff Deon Gentry, Jr. for his services as Class Representative;
10. Approval of an award to the Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees under the Private Attorneys' General Act of 2004 ("PAGA") in the amount of $75,000.00 ($56,250.00 to the LWDA; $18,750.00 to PAGA Employees); and
11. The entering of final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman, David Mara, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiffs Deandre Pierce and Deon Gentry, Jr. [1], and Lluvia Islas of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: November 19, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: _____
Scott M. Lidman

Attorney for Plaintiff
DEON GENTRY, JR.

[1] The declaration of Plaintiff Deon Gentry, Jr. was originally filed with this Court in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff Gentry, Jr. has re-filed his declaration with the instant Motion.

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MEMORANDUM OF POINTS AND AUTHORITIES[2]

I. INTRODUCTION

Plaintiffs Deandre Pierce and Deon Gentry, Jr. (together, "Plaintiffs") submit this memorandum of points and authorities in support of their motion for final approval of the class action settlement (the "Settlement") with Defendant Quality Drive Away, Inc. ("Defendant"). The Settlement Class is defined as: all drivers who contracted with Defendant, were assigned a home terminal in the State of California and were classified as independent contractors at any time from June 12, 2019, to May 11, 2026. There are 213 Class Members. This Settlement also encompasses PAGA claims which covers the period from June 22, 2022, to May 11, 2026. There are 122 PAGA Employees.

In this non-reversionary Settlement, the average Settlement Award to each Settlement Class Member is approximately $5,429.43. Additionally, the average PAGA Amount to PAGA Employees is $153.69. This is a favorable resolution of the highly disputed wage and hour claims in this case and the significant litigation risks that Plaintiffs faced. Since this Court granted preliminary approval on August 24, 2026, nothing has changed to impact the propriety, fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their projected Settlement payments, and as of the date of this filing, not a single Class Member has opted-out or submitted a written objection to the Settlement.

As explained below, the Court should grant Plaintiffs' motion in its entirety because: (1) the Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiffs' Class Representative Service Awards, and settlement administration costs are all fair, adequate, and reasonable. For these reasons, Plaintiffs respectfully request that this Court enter the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

[2] Given the multiplicity of issues addressed in this Motion, Plaintiffs respectfully request that the Court allow Plaintiffs to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider the attached memorandum of points and authorities which is 23 pages in length.

II. FACTUAL AND PROCEDURAL BACKGROUND

On June 12, 2023, Plaintiff Pierce filed a wage and hour class action against Defendant in San Bernardino County Superior Court, Case No. CIVSB2313410 (the "Pierce Action"). Declaration of Scott M. Lidman ("Lidman Decl.") at ¶ 10. In the Pierce Action, Plaintiff Pierce alleged the following causes of action: failure to pay all straight time wages at statutory minimum wage; knowing and intentional failure to comply with itemized employee wage statement provisions; failure to pay all wages due at the time of termination of employment; failure to reimburse/illegal deductions; and violation of unfair competition law. *Id*.

On June 22, 2023, Plaintiff Gentry, Jr. gave written notice to the Labor Workforce and Development Agency ("LWDA") and filed a wage and hour class action against Defendant in San Bernardino County Superior Court, Case No. CIVSB2314287 (the "Gentry Class Action"). Lidman Decl., ¶ 11. On August 28, 2023, Plaintiff Gentry, Jr. filed a separate action against Defendant in San Bernardino County Superior Court, Case No. CIVSB2322025 asserting a single claim for civil penalties under the Labor Code Private Attorneys General Act ("PAGA") (the "Gentry PAGA Action"). *Id*.

On March 11, 2025, pursuant to a stipulation between the Parties, the Court consolidated the Pierce Action with the Gentry PAGA Action (Case No. CIVSB2313410) being the lead action. Lidman Decl., ¶ 12. On March 29, 2024, a First Amended Complaint was filed in the Pierce Action which added Plaintiff Gentry, Jr. and his claims to the case. *Id*. On April 4, 2024, the Court in the Gentry Class Action dismissed the action without prejudice because the parties and claims were included in the Pierce Action. *Id*.

A. Plaintiffs' Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiffs' primary theories of liability are related to Defendant's misclassification of drivers as independent contractors. Lidman Decl., ¶¶ 13-21. Plaintiffs argue that Defendant cannot satisfy Prong B of the *Dynamex* ABC test, which requires the worker to perform work that is outside the usual course of the hiring entity's business. Lidman Decl., ¶ 13; see *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903, 955-956. Plaintiffs allege that Defendant displays on its website that its business is "delivering and transporting commercial trucks, busses, and recreational vehicles." *Id*. Plaintiffs and

class members are the ones who deliver and transport said trucks, buses, and vehicles. *Id*. As such, Plaintiffs contend they work within Defendant's usual course of business and were misclassified. *Id*. Plaintiffs also assert that Prong A – which requires that workers be free from the control and direction of the hiring entity in connection with the performance of the work (both under the contract for the performance of the work and in fact) – could not be satisfied because Defendant controlled nearly every aspect of the delivery details. *Id*. Namely, Defendant told drivers when they needed to pick up deliveries, Defendant told drivers when they needed to complete deliveries by, and Defendant provided numerous instructions that drivers had to follow during deliveries. *Id*. Plaintiffs additionally argue that any choice-of-law issue would pose no threat to certification given the provision merely suggests that Indiana law will apply to contract interpretation disputes. *Id*. Plaintiffs also contend that this is not a dispute over what the driver contracts say, but rather whether Defendant violated employee protections under California law. *Id*.

As a result of misclassification, Plaintiffs contend that Defendant failed to pay class members minimum wage for all hours worked. Lidman Decl., ¶ 15. Plaintiffs assert that Defendant only pays drivers by the mile or by the trip, which exclusively compensates drivers for hauling tasks and fails to compensate drivers for other required work. *Id*.

Plaintiffs contend that Defendant unlawfully deducted business expenses from class members.[3] Lidman Decl., ¶ 17. Plaintiffs claim that Defendant extracted money from Plaintiffs and class members to pay for expenses encountered during their runs, such as for lodging or fuel. *Id*. Notably, Defendant would give drivers an "advance" which Plaintiffs claim was strictly meant to pay for fuel for trips. *Id*. Defendant would then inevitably claw back and deduct these advances, and thus force drivers to incur costs for fuel for every trip. *Id*.

Plaintiffs also bring derivative claims for failure to provide accurate itemized wage statements and timely pay final wages by virtue of Defendant's failure to pay for all hours worked and unlawful business expense deductions. Lidman Decl., ¶ 19.

[3] Under Labor Code section 2802, the employer must "indemnify its employees for expenses they necessarily incur in the discharge of their duties[.]" The California Supreme Court in *Gattuso v. Harte-Hanks Shoppers, Inc.*, makes clear that the goal of section 2802 is "to prevent employers from passing on their operating expenses to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 569-71.

Plaintiffs' main PAGA claim arises under Labor Code section 226.8, for the willful misclassification of drivers as independent contractors.[4] Lidman Decl., ¶ 21. Plaintiffs claim that Defendant's misclassification was willful considering California's ABC test has been in effect throughout the entirety of the class period. *Id*. Moreover, that Defendant had no legitimate basis to believe in the lawfulness of its classification, particularly considering drivers preform work that is central to Defendant's business. *Id*.

As explained *infra* and in Plaintiffs' Motion for Preliminary Approval, Defendant denies Plaintiffs' claims and asserts several affirmative defenses, both on the merits and with respect to class certification.

B. Mediation and Settlement

Prior to mediation, Defendant responded to each Plaintiff's formal written discovery requests, including providing thousands of responsive documents. Lidman Decl., ¶ 25. Defendant produced a class list after completing a Belaire West notice procedure and Plaintiffs engaged in substantial communications with class members after receiving this list. *Id*. Additionally, Plaintiffs took the depositions of Defendant's Person Most Qualified witnesses, William James Martin, and retained an expert in this matter as part of its filing of a Motion for Class Certification. *Id*. Likewise, Defendant took the Depositions of Plaintiff Pierce and Plaintiff Gentry Jr. *Id*. 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 at mediation. *Id*.

The Parties attended two full-day mediations. Lidman Decl., ¶ 26. The Parties held the first mediation with respected wage and hour mediator Kelly Knight on February 11, 2025, which was unsuccessful. *Id*. The Parties then proceeded with litigation and preparing for class certification. *Id*. After Defendant filed its Opposition to Class Certification, but prior to Plaintiffs filing their Reply, the Parties agreed to attend a second mediation with respected wage and hour mediator Stephanie Chow on

[4] Under Labor Code, section 226.8, a person or entity that willfully misclassifies an employee as an independent contractor "shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation."

March 12, 2026, which ultimately resulted in the present settlement. *Id*. In the months that followed, the Parties finalized the terms of settlement and executed the Stipulation of Class Action and PAGA Settlement ("Settlement"). *Id*.

C. Preliminary Approval of Settlement

Plaintiffs submitted the Stipulation of Class Action and PAGA Settlement with their Motion for Preliminary Approval to the Court and the LWDA on July 15, 2026. Lidman Decl., ¶ 27. On August 24, 2026, the Court signed an Order Granting Preliminary Approval of the Settlement. Lidman Decl., ¶ 28; Exh. 1. On August 26, 2026, Plaintiffs provided the LWDA with a copy of the signed Order Granting Preliminary Approval. Lidman Decl., ¶ 29; Exh. 2.

On September 9, 2026, the Settlement Administrator mailed the Court-approved Notice Packet (which consists of the Notice of Pendency of Class Action and Proposed Settlement and Notice of Settlement Award) in English and Spanish to the 212 Settlement Class Members, who had until November 9, 2026 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Lluvia Islas of Phoenix Settlement Administrators ("Islas Decl."), ¶¶ 5, 10-12. As of the date of this filing, there have been **no objections** and **no opt-outs** received. *Id*. at ¶¶ 10-12.

Plaintiffs now respectfully submit the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

After the preliminary approval was granted, the Settlement Administrator advised the total number of Class Trips taken was 32,664, confirming the escalator clause was not triggered. Islas Decl., ¶ 13. As a result, the Settlement Class is defined as: all drivers who contracted with Defendant, were assigned a home terminal in the State of California and were classified as independent contractors at any time from June 12, 2019, to May 11, 2026. Lidman Decl., ¶ 30.

B. Monetary Terms of the Settlement

The Settlement provides for Defendant to pay a Gross Settlement Amount of $2,000,000.00. Settlement, ¶ 4. The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting requested attorneys' fees ($700,000.00) and verified costs ($44,504.40), proposed Class Representative Service Awards to Plaintiffs ($40,000.00, $20,000.00 each), proposed payment to the

LWDA for its share of civil penalties ($56,250.00 which is 75% of the $75,000 allocated to PAGA penalties), proposed payment to Aggrieved Employees for their share of civil penalties ($18,750.00 which is 25% of the $75,000 allocated to PAGA penalties), and requested Settlement Administration costs ($11,175.00). Settlement, ¶ 5.A. Based on these requested amounts, the Net Settlement Amount ("NSA") is calculated to be approximately **$1,129,320.60**. Islas Decl., ¶ 15.

The Individual Settlement Awards from the NSA shall be determined 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 which will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator or which is the Settlement Class member's total trips worked as an independent contractor driver during the Class Period, and the denominator of which is the total trips worked as an independent contractor driver by all Settlement Class members (who do not opt out) who worked during the Class Period. *See* Settlement, ¶ 5.D.i.

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 10% as wages and 90% as non-wages (i.e., reimbursement, penalties and interest). Settlement, ¶ 5.F. This allocation is based on Plaintiffs' estimation of Defendant's potential exposure on Plaintiffs' claims. As discussed in Plaintiffs' motion for preliminary approval, the majority of Defendant's potential exposure is a result of alleged unlawful deductions from wages and failure to reimburse claims, which is over six times more than the estimated exposure for unpaid wages. Lidman Decl., ¶ 23. Considering reimbursement, penalties, and interest, it is reasonable that 90% of the Settlement Award be allocated as non-wages.

Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. Settlement, ¶ 4.D. Defendant agrees to deposit the employer's share of payroll taxes with Phoenix Settlement Administrators as part of the First and Third Installments. Settlement, ¶ 4.B.

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C. Summary of Notice Process

1. Mailing of Notice Packets

On August 25, 2026, Defendant provided Phoenix with data files containing names, last known addresses, phone numbers, Social Security numbers, and the number of trips worked by each Settlement Clas Member during the Class Period and PAGA Period ("Class Data"). Islas Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Notice Packet in English and Spanish to the 212 Settlement Class Members on September 9, 2026. *Id*. at ¶¶ 4-5. Following the initial mailing, zero (0) Notice Packets were returned to Phoenix by the Post Office. *Id*. at ¶ 6. Thus, zero (0) Notice Packets remain undeliverable.

The deadline for Settlement Class Members to submit objections, requests for exclusion, or disputes was November 9, 2026. Islas Decl., ¶¶ 10-12.

On November 9, 2026, the Settlement Administrator was notified of an individual who was inadvertently not listed as a class member and not included in the Class Data. Islas Decl., ¶ 7. On November 18, 2026, it was confirmed that the individual was indeed a Class Member. *Id*. The Settlement Administrator promptly sent the Class Member Notice via e-mail and U.S. first class mail on November 18, 2026. *Id*. On November 18, 2026, Class Counsel contacted the Class Member, and the Class Member confirmed receipt of the Notice. Lidman Decl., ¶ 42. The Class Member waived his right to the 60-day response deadline, did not dispute the number of his Class Trips, nor did the Class Member request to be excluded from the Settlement or object to the Settlement. *Id*., Exh. 5. Class Counsel notified the Settlement Administrator that the newly confirmed Class Member waived his right to a 60-day response deadline, did not dispute the number of his Class Trips, does not request to be excluded from the Settlement, and does not object to the Settlement. Lidman Decl, ¶ 42; Islas Decl., ¶ 8.

There is a total of 213 Class Members. Islas Decl., ¶ 9. As of the date of this filing, there were no objections and no opt-outs. *Id*. at ¶¶ 10-12. Accordingly, the participation rate amongst the Settlement Class Members is 100% and the average estimated payment is $5,429.43, with the highest estimated payment to a Settlement Class Member being $87,056.98 and the lowest estimated payment to a Settlement Class Member being $34.57. *Id*. at ¶¶ 14, 16.

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D. Timing of Funding and Payments

Defendant shall deposit with the Settlement Administrator the Gross Settlement Amount. Settlement ¶ 4.B. Defendant agrees to deposit the Gross Settlement Amount in three major installments. *Id*.

The First Installment in the amount of $1,000,000.00 shall be deposited with the Settlement Administrator on the latter of (a) December 12, 2026, or (b) 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. Settlement, ¶ 4.B.(1). Within ten (10) calendar days following Defendant's deposit of the First Installment, the Settlement Administrator will calculate amounts owed as part of the "First Distribution" and provide the same to counsel for the Parties for review and approval. Settlement, ¶ 5.B. Defendant shall also deposit any employer-side taxes owed as part of the First Distribution within ten (10) calendar days of written notice from the Settlement Administrator of the total of said tax amount. Settlement, ¶ 4.B.(1). Within seven (7) calendar days of approval by counsel for the Parties of the First Distribution amounts, the Settlement Administrator will prepare and send amounts from the First Distribution. Settlement, ¶ 5.B.

The Second Installment of $500,000.000 shall be paid in four quarterly installments commencing three months after the First Installment is deposited by Defendant. Settlement, ¶ 4.B.(2). Each quarterly installment shall be paid on or before the last date of the applicable calendar month. *Id*.

The Third Installment in the amount of $500,000.00 shall be deposited with the Settlement Administrator in four quarterly installments commencing three months after the Second Installment is deposited by Defendant. Settlement, ¶ 4.B.(3). Each quarterly installment shall be paid on or before the last date of the applicable calendar month. *Id*. Within ten (10) calendar days following Defendant's deposit of the final payment of the Third Installment, the Settlement Administrator will calculate amounts owed as part of the "Second Distribution" and provide the same to counsel for the Parties for review and approval. Settlement, ¶ 5.C. Defendant shall also deposit any employer-side taxes owed as part of the Second Distribution within ten (10) calendar days of written notice from the Settlement Administrator of

the total of said tax amount. Settlement, ¶ 4.B.(3). Within seven (7) calendar days of approval by counsel for the Parties of the Second Distribution amounts, the Settlement Administrator will prepare and send amounts from the Second Distribution. Settlement, ¶ 5.C.

After disbursement, Settlement Class Members will have 180 days to cash their checks. *See* Settlement ¶ 5.G. Funds remaining unclaimed will be distributed to the California Secretary of State – Unclaimed Property Fund in the name of the Settlement Class Member. *Id*.

E. Notice of Judgment

As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class members, the final judgment entered by the Court and any changes to the Final Approval hearing date or location will be posted on the Settlement Administrator's website at pierce-v-quality-drive-away.phoenixcases.com. *See* Settlement ¶ 11.C.

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382

Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. *See Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470.

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on August 24, 2026. *See* Lidman Decl., ¶ 28; Exh. 1. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Member has objected to any portion of the Settlement and no Settlement Class Member has elected to opt-out of the Settlement. *See* Islas Decl., ¶¶ 10-12. This Court should therefore confirm its conditional

certification of the Settlement Class.

B. <u>This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims</u>

California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *Id*. Now that notice has been provided to the Settlement Class, Plaintiffs respectfully request that the Court finally approve the Settlement as fair, adequate, and reasonable.

1. The Settlement was Reached at Arm's Length, Through Experienced Counsel and An Experienced Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arm's length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.,* 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court,* 89 Cal.App.3d 434 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited:

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case. *Id*. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of

the circumstances." *Wershba v. Apple Computer, Inc.,* 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because, "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id*. (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

Here, the Settlement resulted from extensive arm's length settlement negotiations between qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate, and reasonable for all Settlement Class Members. While Plaintiffs maintain that their claims are meritorious, Plaintiffs acknowledge that their position includes substantial risks and uncertainty, which justifies a downward departure from the maximum exposure that Plaintiffs' calculated each claim carried.

As detailed in Plaintiffs' Preliminary Approval Motion, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiffs' claims. For example, with respect to Plaintiffs' misclassification argument, Defendant argues that Indiana law, as opposed to California law, applies to whether an employment relationship has formed. Lidman Decl., ¶ 14. Defendant relies on its driver contract agreements which include an Indiana choice-of-law provision. *Id*. Defendant notes that this choice-of-law issue would render class certification completely improper because, in order to determine what law applies, the Court would have to inquire into where class members primarily reside and work, which Defendant argues can only be done on an individualized basis. *Id*. Defendant notes that this would render any trial completely unmanageable, particularly considering drivers preform work all throughout the country. *Id*. Defendant also argues that it does properly classify drivers as independent contractors, and that Plaintiffs attempt to oversimplify the analysis of the ABC test. *Id*. Defendant notes that Indiana has a substantively identical ABC test, and that the Indiana Supreme Court in *Q.D.A., Inc. v. Indiana Dep't of Workforce Dev.* (Ind. Sup. Ct. 2019) 114, N.E. 3d 840, 845-848, already determined that Defendant has properly classified its drivers as independent contractors. *Id*. Specifically, the Indiana Supreme Court found that Defendant was effectively a brokerage that simply connected drivers with customers who needed hauling services. *Id*. Thus, the court ruled that Defendant's business is distinct from the drivers and that Defendant did not control the work of drivers. *Id*. While

this is not a California Supreme Court decision, it involves the same Defendant and addresses the very issue that is at the heart of this case. *Id*.

If Plaintiffs were to succeed on their misclassification argument, Defendant has defenses against Plaintiffs' remaining claims. In regard to Plaintiffs' failure to provide minimum wage claim, Defendant argues that its contracts are not so limited in their compensation. Lidman Decl., ¶ 16. Rather, Defendant argues, its contracts specify that it pays drivers for all tasks, including driving and non-driving tasks. *Id*.

As for Plaintiffs' claim for unlawful deductions and failure to reimburse business expenses, Defendant reiterates that this underlying claim is worthless considering Plaintiffs and drivers are not employees but independent contractors. Lidman Decl., ¶ 18. Defendant also argues that Plaintiffs are incorrect and that there is no mandate that the advanced funds could only be used for fuel. *Id*. Instead, Defendant claims that advances could be used as the drivers saw fit. *Id*. Moreover, Defendant claims that it could provide declarations from drivers proving that drivers regularly used advanced funds for non-work related purposes. *Id*. Thus, Defendant maintains that whether, and the extent to which, business expenses were incurred could not be adjudicated on a class-wide basis and would be riddled with individualized inquiries. *Id*.

In regard to Plaintiffs' wage statement and waiting time penalties claims, Defendant contends that even if Plaintiffs were successful in their underlying claims, they would have to prove Defendant "willfully" failed to pay employees the appropriate wages and premiums due upon separation of employment. Lidman Decl., ¶ 20. Defendant contends that any failure to pay wages due at the separate of employment was not willful and that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those wages.[5] *Id*. Defendant also argues that Plaintiffs' underlying claims cannot form the basis of their wage statement claim.[6] *Id*.

As for Plaintiffs' claim for PAGA penalties, Defendant maintains that Plaintiffs' misclassification claim could be defeated both at certification and on the merits for the reasons discussed previously. Lidman Decl., ¶ 22. Defendant notes, at the very least, that its classification could not be considered

[5] *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

[6] *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, (noting employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate).

willful. *Id*. Specifically, Defendant points out that Indiana has a nearly identical ABC test and the Indiana Supreme Court, as discussed above, sided with Defendant when facing the same issues Plaintiffs present here. *Id*. Thus, the question on the willfulness here would come down to whether Defendant reasonably relied on that ruling or should have known California would rule differently. *Id*.

These considerations, not only bore heavily on the negotiations leading to the Settlement, but also confirm that the Settlement is fair, adequate, and a reasonable compromise in view of the risks of further litigation. Lidman Decl., ¶ 24. As detailed in the Preliminary Approval Motion, Plaintiffs carefully vetted the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages figures. *Id*. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury

Individual Settlement Payments will be calculated based on the number of trips worked as an independent contractor driver during the Class Period. *See* Settlement, ¶ 5.D.i. This method of distribution compensates Settlement Class Members based on the estimated extent of their injuries, as Settlement Class Members who worked more trips, would have been subject to more of the alleged wage and hour violations than those who worked fewer trips. Thus, the formula for compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

3. The 100 % Participation Rate and Absence of Any Objections Further Confirms That the Settlement is Fair, Adequate, and Reasonable

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk*, *supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, as of the filing of this Motion, no Notices were undeliverable and not a single Settlement Class Member has objected to the Settlement, nor did any Settlement Class Members elect to opt-out of the Settlement. Islas Decl., ¶¶ 10-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair,

adequate, and reasonable.

C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common Fund Confirmed by a Lodestar Cross-Check

Plaintiffs and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See*, *e.g.*, *Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba*, *supra*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method).

The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), that "[t]he percentage of fund method survives in California class action cases." Specifically, the *Laffitte* Court held:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 503 (internal citation omitted); *see also, e.g.*, *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored

in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.") (citation omitted).

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.")

Here, Class Counsel's fee request is $700,000.00 (35% of the Gross Settlement Amount). Settlement, ¶ 4.C.(4). The fee award will be split between Mara Law Firm, PC; Haines Law Group, APC; Lidman Law, APC; and Stonebrook Law. Lidman Decl., ¶ 32. Plaintiffs have provided written approval of the split of attorneys' fees in this action. *Id*.

The fee request of $700,000.00 is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008); *see also*, *e.g.*, *Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour class actions…"); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Lidman Decl., ¶ 29. Thus, the percentage sought by Class Counsel here is reasonable.

Next, as stated, under the lodestar method the court computes the "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances

this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank,* 92 Cal.App.4th 819, 834 (2001) ("There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation").

Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*, *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In class actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of certainty," a court may "adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, "the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services." *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of **$474,125.00** which results in a multiplier of 1.47 compared to the $700,000.00 fee request. *See* Lidman Decl., ¶ 37. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, Westlaw Court's Express's Legal Billing Report (Vol. 14, No. 3), and 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates, submitted concurrently herewith. *Id*., Exh. 4; Mara Decl., Exhs. 2, 4. Based on the above sources, Class Counsel's hourly rates are reasonable. *Id*.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (27th Year Attorney)	$950	85	$80,750.00
David Mara (22nd Year Attorney)	$850	277	$235,450.00

Paul K. Haines (19th Year Attorney)	$975	20.9	$20,377.50
Milan Moore (10th Year Attorney)	$725	79.6	$57,710.00
Tiara Gose-Hardy (7th Year Attorney)	$625	22.3	$13,937.50
Carter Cordura (1st Year Attorney)	$400	144	$57,600.00
Paralegals	$250	33.2	$8,300.00
Total Lodestar			**$474,125.00**

Lidman Decl., ¶ 37; Mara Decl., ¶¶ 18, 22.

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Islas Decl., ¶¶ 10-12. Additionally, the *average* settlement payment in this case of approximately $5,429.43 is well above settlement payments in similar wage and hour class action settlements. *See*, *e.g.*, *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately $60); *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately $108). The fact that Class Counsel achieved these results in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class

Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiffs, Class Counsel have borne all the costs of litigation without receiving any compensation for over three years. Lidman Decl., ¶ 34.

From its inception, this case has been heavily litigated and has required a significant amount of time and labor. Notably, Plaintiffs filed a motion for class certification in this matter, which required substantial discovery, significant research and investigation, and expert analysis, amongst other things. Lidman Decl., ¶ 33; Mara Decl., ¶ 12. Plaintiffs litigated this case such that they were able to fully brief the class certification issue; the Parties agreed to attend a second mediation only after Defendant filed its opposition to class certification, as Plaintiffs were preparing to file their Reply. *Id*. As alluded to, prior to moving for class certification the Parties had to engage in substantial litigation efforts. *Id*. Both Parties propounded and responded to formal discovery, such that both parties were prepared to fully brief the issues for class certification. *Id*. Critically, Plaintiffs took the deposition of Defendant's Person Most Qualified witness, William James Martin, and retained an expert in this matter as part of its filing of a Motion for Class Certification. *Id*. Likewise, Defendant took, and Class Counsel had to defend, the Depositions of Plaintiff Deandre Pierce and Plaintiff Deon Gentry Jr. Class Counsel also had to expend significant time and effort investigating and analyzing the thousands of documents produced in discovery, including driver contracts, time and activity records, hours of service log books, driver payroll and wage records, driver handbooks, driver training and onboarding materials, and other policies relating to drivers. *Id*. Moreover, Defendant produced a class list after completing a Belaire West notice procedure. *Id*. Plaintiffs engaged in substantial communications with class members after receiving this list. *Id*. Further, Class Counsel prepared for and attended two full-day mediations in this matter. *Id*.

During this time, Class Counsel expended a total of $44,054.40 in actual costs and expect to incur approximately $450.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, service and messenger fees, postage fees, and/or court costs for future court appearances for a total of $44,504.40. Lidman Decl., ¶ 34, Exh. 3; Mara Decl., ¶ 25, Exh. 1. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. *See* Lidman Decl., ¶ 40. Given the considerable potential for adverse outcomes in this case,

including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims of misclassification and related wage and hour violations and penalties. *See* Lidman Decl., ¶¶ 3-8; Mara Decl., ¶¶ 2-9, 19-21; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-5; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-4; and Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id*. Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. *See* Lidman Decl., ¶ 35. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id*.

So often, lawyers unskilled in the class action aspect of wage and hour cases do not pay attention to or put the work into how the evidence must be presented for class-wide adjudication. Mara Decl., ¶ 13. Strong class-wide cases perish in the hands of inexperienced counsel because the case has not been worked up to succeed at certification. *Id*. Class Counsel here has considerable experience in class litigation and, from the beginning of the case, has marshalled evidence with a sharp focus on class-wide proof needed for the matter to get certified. *Id*. This case was no different. This filtering of voluminous evidence into class-wide proof while keeping an eye on the merits of the litigation required a considerable amount of attorney time and skill. *Id*. Again, Class Counsel had to engage in considerable discovery efforts to obtain the necessary discovery here. *Id*. Class Counsel had to analyze thousands of documents, take the depositions Defendant's PMQ witness, retain experts, and speak to numerous class members ahead of certification. *Id*. Ultimately, through this time, effort, and skill, Class Counsel was able to fully brief the class certification issues and was able to achieve substantial recovery for the class even in the face of the significant challenges presented. *Id*. Again, the *average* settlement payment in this case of approximately $5,429.43 which is well above settlement payments in similar wage and hour class action settlements.

As such, it is reasonable to award Class Counsel a fee award of 35% of the Gross Settlement Amount considering it is commensurate with their skill, reputation, and experience.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding the classification of workers and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶ 35. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable

Class Counsel seek to be reimbursed a total of $44,504.40[7] in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 34, Exh. 3; Mara Decl., ¶ 25, Exh. 1. Moreover, the costs Plaintiffs seek are the types of costs routinely approved by courts. *See, e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011)("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co*., 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Settlement Class Member has objected to them, Plaintiffs respectfully request the Court grant the request for actual costs incurred.

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiffs also request that the Court approve $11,175.00 in administration costs to the Settlement Administrator, Phoenix Settlement Administrators. As detailed in the declaration of Lluvia Islas on behalf of Phoenix Settlement Administrators ("Phoenix") submitted herewith, Phoenix performed duties

[7] Class Counsel have expended a total of $44,054.40 in actual costs and anticipates incurring costs in the amount of $450.00 for filing fees, service and messenger fees, and/or postage fees.

in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Islas Decl., ¶ 2. Among other things, Phoenix calculated each Settlement Class Member's individual settlement award, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 213 Settlement Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Islas Decl., ¶¶ 2-17. For these reasons, Phoenix's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. Plaintiffs' Requested Service Awards are Fair, Adequate, and Reasonable in View of Plaintiffs' Efforts and the Risks that They Assumed on Behalf of the Class

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See*, *e.g.*, *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294 (N.D. Cal. 1995) (approving $50,000 service payment). In analyzing the requested service payment, courts consider the following factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

Here, analyzing those factors weigh in favor of approving Plaintiffs' requested service award. The request of $20,000.00 each is reasonable given Plaintiffs' efforts in this case and the risks they undertook on behalf of Settlement Class Members. Lidman Decl., ¶ 41; Declaration of Deandre Pierce ("Pierce Decl."), ¶¶ 3-13; Declaration of Deon Gentry, Jr. ("Gentry Jr. Decl."), ¶¶ 7-12.

In agreeing to the settlement, Plaintiffs have agreed to a general release of their claims against Defendant. Settlement, ¶ 3.E.; Gentry Jr. Decl., ¶ 10. The general release being given by Plaintiffs is far greater than the release proposed for Class Members. *See* Settlement, ¶ 3. This payment not only compensates Plaintiffs for the work they undertook in this case, but also for the claims and potential

claims they may have against Defendant that they are releasing. For example, Plaintiffs brought this class action lawsuit to seek recourse for other employees instead of filing individual cases on behalf of merely themselves. Pierce Decl., ¶ 4; Gentry Jr. Decl., ¶ 8. Since the inception of this case, Plaintiffs have put the Class's interests ahead of their own. Pierce Decl., ¶¶ 4, 13, 15; Gentry Jr. Decl., ¶ 12. These service awards thus compensate Plaintiffs for the claims they forwent bringing for the betterment of the Class.

The requested award is also appropriate and reasonable based upon Plaintiffs' time and effort expended on this case. *See* Lidman Decl., ¶ 41; Pierce Decl., ¶¶ 4-11; Gentry Jr. Decl., ¶¶ 7-9. Notably, Plaintiffs both had their depositions taken in this matter. Lidman Decl., ¶ 41. Not only were Plaintiffs available for the full day of their depositions, but Plaintiffs had numerous preparation sessions prior to sitting for their depositions. *Id*. In addition, Plaintiffs also provided substantial factual information and documents to Class Counsel, attended multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, responded to multiple discovery requests, and reviewed settlement documents. *Id*. The class has benefited from Plaintiffs' actions as the average settlement amount is $5,429.43. Plaintiff Pierce estimates he spent approximately 55 hours on activities related to this case. Pierce Decl., ¶ 11. Plaintiff Gentry, Jr. estimates he spent approximately 48 hours on activities related to this case. Gentry Jr. Decl., ¶ 9.

Moreover, as representatives for the absent class members, Plaintiffs risked a potential judgment taken against them for attorneys' fees and costs if this matter had not been successfully concluded. Case law holds that a losing party is liable for the prevailing party's costs. *See Early v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433. And in some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for attorneys' fees as well. The risk of payment of Defendant's costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are willing to take this risk, and Plaintiffs championed a cause on behalf of others with potentially huge monetary risks.

Additionally, the modern-day work force is mobile, with employees holding several jobs over the span of their career. It is also true that prospective employers in this computer, high-tech age "Google" and/or do extensive background checks and have access to court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiffs' conduct will not be lost on a prospective employer

who has to choose between an applicant who has never sued an employer and one who has done so. The requested award far from compensates Plaintiffs for opportunities they may lose in the future because of the exercise of a Constitutional right to Petition the Courts for redress of a grievance.

Plaintiffs accepted these risks and burdens because they wanted Defendant to compensate its current and former drivers for unpaid wages. Pierce Decl., ¶¶ 4, 13, 15; Gentry Jr. Decl., ¶ 8.

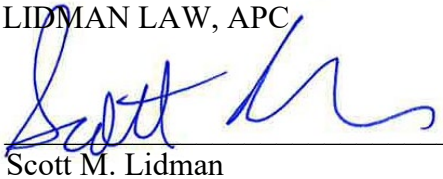
Moreover, after receiving notice of the proposed Class Representative Service Awards for Plaintiffs, no Settlement Class Member objected to the proposed awards, as of the date of this filing. *See* Islas Decl., ¶¶ 10-12. Thus, the service awards to Plaintiffs are appropriate and justified based upon Plaintiffs' time and effort expended on this case, the risks they faced, and the outcome of this case.

V. CONCLUSION

For the reasons stated herein, Plaintiffs respectfully submit that this Court should grant Plaintiffs' motion in its entirety and adopt the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment submitted herewith.

Dated: November 19, 2026

Respectfully submitted,
LIDMAN LAW, APC

By: 
Scott M. Lidman

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DEON GENTRY, JR.