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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO**

RANDY CURRAN, CIERRA WOOLEN, LUISA MAZON, ROBERTO RAMIREZ, LINDA FANG, and ALEXIS BELL, individually and on behalf of others similarly situated,	:	Civil Action No.: CV2024-0847
	:	
	:	PLAINTIFFS' NOTICE OF
	:	UNOPPOSED MOTION FOR FINAL
	:	APPROVAL OF CLASS,
	:	REPRESENTATIVE, AND
Plaintiffs,	:	COLLECTIVE ACTION
	:	SETTLEMENT
v.	:	
	:	Action Filed: March 29, 2024
ADVANCED CARRIER SERVICES, LLC, B-Z CONVEYANCE, LLC, DELIVERY RESPONSE ON-TIME PARCEL LLC, ONDOT LLC, AMAZON.COM, INC., and AMAZON LOGISTICS, INC.	:	Trial Date: None set
	:	
	:	Hearing Date: November 26, 2024
	:	Time: 9:00 a.m.
	:	Dept.: 11
	:	Judge: Hon. Timothy Fall
Defendants.	:	
	:	
	:	

NOTICE OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS,
REPRESENTATIVE, AND COLLECTIVE ACTION SETTLEMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 26, 2024, at 9:00 a.m. or as soon thereafter as they may be heard in Department 11 of the Superior Court of the State of California for the County of Yolo, Plaintiffs Randy Curran, Cierra Woolen, Luisa Mazon, Roberto Ramirez, Linda Fang, and Alexis Bell (together collectively, “Plaintiffs”) on behalf of themselves and all others similarly situated and aggrieved, will and hereby do move for this Court for entry of an Order:

1. Finally approving the settlement set forth in the Class, Collective, and PAGA Representative Action Settlement and Release (the “Settlement Agreement”),¹ as fair, reasonable and adequate pursuant to Code of Civil Procedure Section 382;

2. Approving the settlement set forth in the Settlement Agreement as a fair and reasonable resolution of a *bona fide* dispute under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”);

3. Finally approving payment of the Total Settlement Amount of \$2,364,000.00, unless escalated pursuant to the Settlement Agreement as “within the ‘ballpark of reasonableness’” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133) and within the “‘reasonable range’ of the settling party’s” liability (*see North County Contractor’s Assn. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089–1090);

4. Finally approving PAGA penalties as fair, reasonable, and adequate in the amount of \$70,000.00, seventy-five percent (75%), or \$52,500.00, of which will be paid to the Labor and Workforce Development Agency out of the Gross Settlement Amount, and twenty-five percent (25%), or \$17,500.00, of which will be distributed to PAGA Members;

5. Finding that Plaintiff Randy Curran and all non-exempt Delivery Associates who were paid by ADCS to deliver packages to customers of Amazon.com in California from September 6, 2018, through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA for settlement purposes only;

¹ A true and correct copy of the Settlement Agreement is attached with its exhibit(s) as Exhibit 1 to the Declaration of Sarah R. Schalman-Bergen (“Schalman-Bergen Decl.”).

1 6. Finding that Plaintiff Cierra Woolen and all non-exempt Delivery Associates who were
2 paid by BZCY to deliver packages to customers of Amazon.com in California from September 6,
3 2018, through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA
4 for settlement purposes only;

5 7. Finding that Plaintiffs Luisa Mazon, Roberto Ramirez, Linda Fang, and all non-exempt
6 Delivery Associates who were paid by DROT to deliver packages to customers of Amazon.com in
7 California from September 6, 2018 through February 3, 2023, are similarly situated pursuant to 29
8 U.S.C. § 216(b) of the FLSA for settlement purposes only;

9 8. Finding that Plaintiff Alexis Bell and all non-exempt Delivery Associates who were paid
10 by ONDT to deliver packages to customers of Amazon.com in California from September 6, 2018
11 through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA for
12 settlement purposes only;

13 9. Finally certifying Plaintiff Randy Curran and all non-exempt Delivery Associates who
14 were paid by ADCS to deliver packages to customers of Amazon.com in California from September
15 6, 2018 through February 3, 2023, pursuant to Code of Civil Procedure Section 382 for the purpose
16 of settlement only;

17 10. Finally certifying Plaintiff Cierra Woolen and all non-exempt Delivery Associates who
18 were paid by BZCY to deliver packages to customers of Amazon.com in California from September
19 6, 2018 through February 3, 2023, pursuant to Code of Civil Procedure Section 382 for the purpose
20 of settlement only;

21 11. Finally certifying Plaintiffs Luisa Mazon, Roberto Ramirez, Linda Fang, and all non-
22 exempt Delivery Associates who were paid by DROT to deliver packages to customers of
23 Amazon.com in California from September 6, 2018 through February 3, 2023, pursuant to Code of
24 Civil Procedure Section 382 for the purpose of settlement only;

25 12. Finally certifying Plaintiff Alexis Bell and all non-exempt Delivery Associates who were
26 paid by ONDT to deliver packages to customers of Amazon.com in California from September 6,
27
28

1 2018 through February 3, 2023, pursuant to Code of Civil Procedure Section 382 for the purpose of
2 settlement only;

3 13. Finally approving the Plaintiffs as Class Representatives of the Class Members;

4 14. Finally approving Sarah R. Schalman-Bergen and Krysten Connon of Lichten & Liss-
5 Riordan, P.C., Alexandra K. Piazza and Michaela L. Wallin of Berger Montague PC, and Ryan Allen
6 Hancock of Willig Williams & Davidson as Class Counsel for the Class Members;

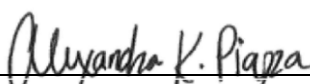
7 15. Appointing Analytics Consulting LLC (“Settlement Administrator” or “Analytics”) to
8 administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement
9 Agreement;

10 16. Entering an Order finally approving the Settlement consistent with the terms of the
11 Settlement Agreement and dismissing the action.

12 This Motion will be based on this Notice of Motion, the Memorandum of Points and
13 Authorities filed herewith, the Declaration of Sarah R. Schalman-Bergen and exhibits attached
14 thereto, argument of counsel and upon such other material contained in the file and pleadings of this
15 action. The motion is unopposed, as Defendants do not oppose the relief requested. To the extent the
16 Court has any additional questions or concerns regarding the settlement, the Parties respectfully
17 request that the Court schedule a hearing.

18
19 Dated: November 1, 2024

Respectfully submitted,

20 
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO**

RANDY CURRAN, CIERRA WOOLEN,
LUISA MAZON, ROBERTO RAMIREZ,
LINDA FANG, and ALEXIS BELL,
individually and on behalf of others similarly
situated,

Plaintiffs,

v.

ADVANCED CARRIER SERVICES,
LLC, B-Z CONVEYANCE, LLC,
DELIVERY RESPONSE ON-TIME
PARCEL LLC, ONDOT LLC,
AMAZON.COM, INC., and AMAZON
LOGISTICS, INC.,

Defendants.

Civil Action No.: CV2024-0847

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS,
REPRESENTATIVE, AND
COLLECTIVE ACTION
SETTLEMENT**

Action Filed: March 29, 2024
Trial Date: None set

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1 **I. INTRODUCTION**

2 Plaintiffs Randy Curran, Cierra Woolen, Luisa Mazon, Roberto Ramirez, Linda Fang, and
3 Alexis Bell (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, file
4 this Unopposed Motion for Final Approval of Class, Representative, and Collective Action Settlement
5 with respect to the claims against Defendants Advanced Carrier Services, LLC (“ACDS”), B-Z
6 Conveyance, LLC (“BZCY”), Delivery Response On-Time Parcel LLC (“DROT”), OnDot LLC
7 (“ONDT”) (together, the “DSP Defendants”) and Amazon.com, Inc. and Amazon Logistics, Inc.
8 (together, “Amazon”) (collectively, “Defendants”).

9 This settlement resolves the claims in Plaintiffs’ Complaint, alleging the DSP Defendants’
10 unlawful policy and practice of failing to pay all wages due to Delivery Associates (also referred to
11 as “DAs”), including overtime compensation, missed meal and rest breaks, and associated penalties,
12 based on alleged violations of California law and the Fair Labor Standards Act, and alleging
13 Amazon’s legal responsibility for the alleged violations as a joint employer. Through an intensive
14 and comprehensive pre-filing ADR process that included arm’s-length negotiations lasting several
15 years, extensive review and analysis of data exchanged through the ADR process, and three days of
16 mediation with the assistance of two respected wage and hour mediators, the Parties agreed to resolve
17 this matter for a non-reversionary Total Settlement Amount of Two Million Three Hundred and Sixty-
18 Four Thousand dollars (\$2,364,000), which provides meaningful relief to approximately 2,378
19 employees. These terms are memorialized in the Parties’ Class, Representative, and Collective Action
20 Settlement Agreement and Release (“Settlement Agreement” or “Agreement”), which is attached as
21 Exhibit 1 to the Declaration of Sarah Schalman-Bergen, submitted with the instant Motion.²

22 On August 20, 2024, the Court entered its Order preliminarily approving the proposed
23 Settlement. The Notice provisions of the Settlement have been effectuated and the Settlement Class
24 Members have been apprised on the existence and terms of the proposed Settlement. As of the forty-
25 five (45) day Response Deadline, the Settlement Administrator has received zero (0) objections and
26

27 ² Unless otherwise defined herein, the defined terms used herein will have the same meaning
28 as those defined in the Settlement Agreement.

1 zero (0) requests for exclusion from the Settlement. The proposed Settlement has been well-received
2 by the Settlement Class Members.

3 For the reasons set forth herein, Plaintiffs respectfully request that the Court grant final
4 approval to the Settlement.

5 **II. BACKGROUND**

6 The relevant factual and procedural background is set forth in detail in Plaintiffs' Unopposed
7 Motion for Preliminary Approval of Class, Representative, and Collective Action Settlement, filed
8 on July 5, 2024 ("Motion for Preliminary Approval"). Plaintiffs provide a brief summary herein for
9 ease of the Court's review.

10 **A. Review of the Factual Background**

11 In and after 2019, Plaintiffs, through counsel, notified Defendants of alleged wage-related
12 claims under the California Labor Code and the FLSA that they intended to file on behalf of
13 themselves and a class and collective of similarly situated individuals and invited Defendants to
14 explore the potential for pre-litigation resolution of those alleged claims. Plaintiffs alleged that the
15 DSP Defendants failed to pay for all time worked, including off-the-clock time, unpaid daily and
16 weekly overtime, missed meal and rest breaks, failure to provide accurate wage statements, failure to
17 reimburse business expenses, unlawful deductions from pay, and failure to pay wages upon
18 termination or resignation of employment. (*See generally* Complaint.) Plaintiffs further alleged that
19 Amazon should be held legally responsible for these violations as a joint employer, a contention that
20 Amazon denied and continues to deny. (*Id.*)

21 The Parties agreed to engage in efforts to resolve the alleged claims prior to the
22 commencement of any lawsuit. (Agreement ¶ 1.) The Parties engaged in an extensive alternative
23 dispute resolution ("ADR") process over more than four years, which consisted of substantial
24 information exchanged through the ADR process, extended meet and conferral between the Parties,
25 and multiple informed, good faith, arms-length settlement negotiations including two full day in-
26 person mediations on January 30 and February 1, 2023, overseen by experienced mediator Barbara
27 Reeves of JAMS, and a third day of mediation on December 18, 2023, overseen by experienced

mediator Dennis Clifford.

As a result of the ADR process (including the extensive review of data), mediations, and settlement negotiations, the Parties agreed fully and finally to resolve these matters on the terms and conditions set forth in the accompanying Settlement Agreement. (*Id.* ¶ 3.) On or around July 17, 2023, Plaintiffs filed with the California Labor & Workforce Development Agency (“LWDA”) and served on Defendants a notice letter under Labor Code section 2699.3 stating an intention to seek PAGA penalties for themselves and other aggrieved employees. (*Id.* ¶ 4.) On March 29, 2024, Plaintiffs filed a Class and Collective and PAGA Representative Action in the Superior Court of California, Yolo County, asserting claims under California law, the FLSA, and the PAGA, in order to seek approval of the settlement.

On July 5, 2024, Plaintiffs filed their Motion for Preliminary Approval of the Settlement. The Court granted Plaintiffs’ Motion for Preliminary Approval on August 20, 2024.

B. Review of the Terms of the Settlement

Settlement Class Members and Collective Members include all non-exempt DAs who were paid by ADCS, BZCY, DROT, or ONDT to deliver packages to customers of Amazon.com in California at any time between September 6, 2018 and February 3, 2023. (Agreement ¶¶ 22–24.) PAGA Members are all non-exempt DAs who were paid by the DSP Defendants to deliver packages to customers of Amazon.com in California at any time between July 17, 2022 and February 3, 2023. (*Id.* ¶¶ 47–48.) There are approximately 2,378 Settlement Class, Collective and PAGA Members. (*Id.* ¶ 72.)

The Settlement provides for a non-reversionary Total Settlement Amount of Two Million Three Hundred and Sixty-Four Thousand dollars (\$2,364,000). (*Id.* ¶ 57.) The employer’s share of payroll taxes will be paid separately and in addition to the Total Settlement Amount. (*Id.* ¶ 36.) The Total Settlement Amount will be used to pay Settlement Payments to Participating Class Members and Collective Action Members, PAGA Payments, Settlement Administration Costs, and attorneys’ fees and costs. (*Id.* at ¶ 78.)

1 The Gross Settlement Amount of \$2,340,000 (the Total Settlement Amount less \$24,000 for
2 Settlement Administration costs) is allocated between the four DSP Defendants based on the
3 particularized facts and theories of liability of the underlying claims against each separate DSP as
4 follows: \$644,653.01 for the ADCS Gross Settlement Amount; \$255,449.23 for the BZCY Gross
5 Settlement Amount; \$980,132.28 for the DROT Gross Settlement Amount; and \$459,765.48 for the
6 ONDT Gross Settlement Amount. (*Id.* at ¶¶ 12, 18, 29, 42.) Class Counsel seeks approval of
7 attorneys' fees in the amount of one-third of each of the DSP Gross Settlement Amounts, or a total of
8 \$780,000.00, and actual costs not to exceed \$40,000.00.³ The Settlement also establishes a PAGA
9 Amount of \$70,000.00,⁴ 75% of which will be paid to the LWDA and 25% of which will be
10 distributed to PAGA Members. (*Id.* ¶¶ 45–46.) The estimated Net Settlement Amount totals
11 \$1,445,000 plus a Net PAGA Amount of \$17,500 that will be distributed to the PAGA Members (for
12 a total of \$1,462,500). (*Id.* ¶ 46.) Subject to the conditions set forth in the Settlement, Defendants will
13 fund the Total Settlement Amount and employer taxes within thirty (30) calendar days after the
14 Effective Date. (*Id.* ¶ 76.)

15 After deduction of fees, costs, Settlement Administration costs, and the PAGA Amount, the
16 Net Settlement Amount attributable to each DSP Defendant will be allocated proportionately among
17 and paid to Eligible Class Members (*i.e.*, (i) Plaintiffs; (ii) Settlement Class Members; who do not
18 exclude themselves from the Settlement; and (iii) Settlement Collective Members) who were paid by
19 that DSP Defendant. Settlement Class Members will not need to submit a claim form in order to
20 receive a Settlement Award. Each individual will receive a minimum settlement payment in the
21 amount of \$50.00,⁵ and in addition, for each Eligible Workweek during which the Eligible Class

23 ³ The portion of the costs that will be deducted from the Gross Settlement Amount will be
24 allocated to each DSP-specific Gross Settlement Amount on a *pro rata* basis, based on the share of
the Gross Settlement Amount attributable to that DSP Defendant. (*Id.* ¶ 16.)

25 ⁴ The portion of the PAGA Amount that will be deducted from the Gross Settlement Amount
will be allocated to each DSP-specific Gross Settlement Amount based on the number of Workweeks
26 worked during the PAGA Period by PAGA Members paid by that DSP Defendant. (*Id.* ¶ 45.)

27 ⁵ The \$50 per Eligible Class Member will be deducted from the Net Settlement Amount
associated with the DSP Defendant that paid them prior to determining individual settlement shares
for Eligible Class Members. (*Id.* ¶ 81(a).)

1 Member worked and was paid by ADCS, BZCY, DROT, or ONDT, the Eligible Class Member shall
2 receive one (1) settlement share. (*Id.* ¶ 81(b)(i).) The total number of settlement shares for all Eligible
3 Class Members paid by each Defendant DSP will be added together and the resulting sum will be
4 divided into the Net Settlement Amount associated with each Defendant DSP. (*Id.* ¶ 81(b)(ii).)⁶ The
5 corresponding value per settlement share associated with each Defendant DSP will then be multiplied
6 by each Eligible Class Member's number of settlement shares during the Class Period to determine
7 each Individual Class Payment.⁷ (*Id.* ¶ 81(b)(iii).)

8 PAGA Members will be eligible to receive a portion of the PAGA Fund based on their
9 Workweeks during the PAGA Period. The Individual PAGA Payment for each PAGA Member will
10 be determined by dividing the PAGA Fund by the total number of Workweeks worked during the
11 PAGA Period by all PAGA Members to arrive at a PAGA Workweek Value, and then multiplying
12 the number of Workweeks worked by each PAGA Member during the PAGA Period by the PAGA
13 Workweek Value. (*Id.* ¶ 50.) Individual PAGA Payments will be allocated as 100% non-wages. (*Id.*
14 ¶ 79.)

15 For all Settlement Class and Collective Members, the average Settlement Award is \$615.01
16 with a high of \$4,972.44. (Barazesh Decl. ¶ 26.) The average PAGA Payment is \$29.26. (*Id.*)

17 Upon the Effective Date, Named Plaintiffs and all Eligible Class Members (*i.e.* those who do
18 not request exclusion from the settlement) will release Defendants and all Released Parties from
19 Released Class Claims.⁸ (Agreement ¶ 59.) No Collective Action Member will release their FLSA

20
21 ⁶ For example, all Eligible Workweeks for all Eligible Class Members paid by ADCS will be
22 added together and the resulting sum will be divided into the ADCS Net Settlement Amount to arrive
23 at a value per settlement share for all Eligible Class Members paid by ADCS during the Class Period.
24 The same calculations will be done for Eligible Class Members paid by each DSP Defendant.

25 ⁷ The Individual Class Payment will be allocated as 70% non-wages (to be reported on IRS
26 Form 1099) and 30% as wages (to be reported on IRS Form W-2). (*Id.* ¶ 81.)

27 ⁸ Class Action Member Released Claims means all claims, rights, demands, charges,
28 complaints, causes of action, obligations, or liability of any and every kind that accrued to the Eligible
Class Members against the Released parties while working to deliver packages to Amazon customers
in the United States and while being paid by ACDS, BZCY, DROT, or ONDT during the Relevant
Time Period and that were or could have been asserted in any version of the complaints filed in this
Action or are based on or arise out of the facts, circumstances, or primary rights that were alleged, or

claims against the Released Parties unless they sign and cash or deposit a settlement check.⁹ (*Id.* ¶ 60.) Each Collective Action Member who signs and cashes or deposits their Individual Settlement Payment check will be considered to have consented to opt into the collective action and to have released all Released Class Claims and FLSA Claims. (*Id.*)¹⁰ Upon the Effective Date, the State of California with respect to PAGA Members and each PAGA Member will be deemed to have released all of the Released Parties of the Released PAGA Claims.¹¹ (*Id.* ¶ 62.)

could have been alleged, in any version of the complaints filed in this Action, including but not necessarily limited to those for: (1) failure to provide meal periods or meal period premium pay under the California Labor Code, including without limitation Sections 204, 218.5, 218.6, 223, 226.7, 512, 558.1 and the applicable Wage Order; (2) failure to authorize or permit rest periods or rest period premium pay under the California Labor Code, including without limitation Section 204, 218.5, 218.6, 223, 226.7, 558.1 and the applicable Wage Order; (3) failure to provide accurate and itemized wage statements or maintain records under the California Labor Code, including without limitation Sections 226 and 1174, the applicable Wage Order, and the Fair Labor Standards Act; (4) failure to pay minimum wage or failure to pay overtime under the Fair Labor Standards Act; (5) failure to pay minimum wage, failure to pay overtime, or failure to timely pay all wages owed under California Labor Code, including without limitation Sections 200, 201-204, 210, 510, 1182.11, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2926, and 2927 and the applicable Wage Order; (6) failure to reimburse necessary expenditures or losses under the California Labor Code, including without limitation Section 221, 2802, 510, 558.1, and the applicable Wage Order; (7) failure to issue payment of wage dues in compliance with California Labor Code Section 212; (8) unlawful deductions in violation of the California Labor Code, including without limitation Sections 221-225.5; and (9) unfair competition or unfair business practices under the California Unfair Competition Law and California Business and Professions Code, Cal. Bus. & Prof. Code Sections 17200 *et seq.* (Agreement ¶ 59.)

⁹ Opt-in and release language regarding the release of the FLSA claims will be printed on each Individual Settlement Payment check, with the advisement that signing and cashing or depositing such check constitutes consent under the FLSA to opt into the collective action as proposed by the Complaint and to release all Eligible Class Members' Released Claims, including FLSA claims, against all of the Released Parties. (*Id.* ¶ 61.)

¹⁰ As noted in Plaintiffs' Motion for Preliminary Approval, the six Named Plaintiffs also entered into separate release agreements, wherein each of them will receive an additional negotiated payment for their broader general release of claims. The additional payments in exchange for a general release of claims to the Named Plaintiffs do not otherwise impact fairness of this Settlement. Here, the Named Plaintiffs bargained away additional rights beyond the scope of the wage-hour claim release. *See* Declaration of Sarah Schalman-Bergen submitted with Plaintiffs' Motion for Preliminary Approval ¶ 22 (hereinafter "Schalman-Bergen Decl. 1").

¹¹ PAGA Released Claims means of all claims under the Private Attorneys General Act that were pled or could have been pled, based on, or which arise out of the facts concerning the threatened claims against Defendants arising during the PAGA Period, including, but not limited to claims for civil penalties based on California Labor Code sections 201-204, 210, 212, 218.5, 218.6, 221-225.5, 226, 226.3, 226.7, 226.8, 432, 510, 512, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198-1199, 2800, 2802, 2926, 2927, and the applicable IWC Wage Orders.

1 If the Settlement is finally approved, Analytics will administer payments to the Participating
2 California Class Action Members, PAGA Settlement Group Members, and Collective Action
3 Members, including calculation of payroll taxes and preparation of tax reporting documents as
4 applicable. (*Id.* ¶ 67.) Analytics will also administer payment to the LWDA in amount of \$52,500.00
5 as its 75% share of the \$70,000.00 PAGA Payment (i.e., the amount paid for PAGA penalties under
6 the Settlement). (*Id.*)

7 The Settlement Administrator will send reminder emails and make telephone calls to those
8 who have not cashed their check within sixty days before the end of the check cashing period. (*Id.* ¶
9 84 (a).) At the conclusion of the 180-day cash check period, uncashed checks attributable to Individual
10 Class Payment checks and Individual PAGA Payment checks shall be transmitted the State
11 Controller’s Office, to be held in the name of each expired check payee, pursuant to applicable
12 unclaimed property laws. (*Id.*)

13 **C. Review of the Notice Process**

14 Following the Court’s Order granting Preliminary Approval, the Parties worked to effectuate
15 the notice provisions of the settlement. Pursuant to the Preliminary Approval Order, the Court-
16 approved Settlement Administrator, Analytics Consulting LLC (“Analytics”), administered the
17 Settlement Notice. (*See* Declaration of Caroline P. Barazesh on Behalf of Analytics Consulting LLC
18 (“Barazesh Decl.”).)

19 On August 6, 2024, Analytics received the Notice of Class Action and Proposed Settlement
20 (“Class Notice”). (Barazesh Decl. ¶ 3.) The Notice advised Settlement Class and Collective Members
21 of their right to request exclusion from the Settlement, object to the Settlement and the implications
22 of each such action. (*Id.* ¶ 4.) The Notice also advised Settlement Class and Collective Members of
23 applicable deadlines and other events, including the Final Approval Hearing, their estimated
24 settlement award and number of eligible work weeks, and how they could obtain additional
25 information. (*Id.*)

26 Between August 9, 2024 and August 22, 2024, Counsel for Defendants provided Analytics
27 with the Class List. The Class List contained names, last known mailing addresses, work weeks,
28

Employee IDs, Social Security Numbers where available, phone numbers and email addresses where available for 3,049 employees. (*Id.* ¶ 5.) It was noted that the data files did not contain the city, state, or zip code, for 995 addresses. Analytics researched these addresses in Experian and found 905 updated addresses, and Analytics manually researched the remaining 90 records to ensure that the Settlement Class Members were included in the mailing list. (*Id.* ¶ 7.) The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Notices.

After analyzing the Class List and consolidating duplicate entries representing the same individuals, Analytics identified seven (7) duplicate records, as well as five hundred and eighty-nine (589) records for individuals who had no eligible workweeks within the Class Period, and these were excluded from the mailing list. (*Id.* ¶¶ 10–11.) There are 2,378 Settlement Class and Collective Members. (*Id.*)

Analytics performed calculations of the settlement shares and PAGA payments per the terms in the Settlement Agreement. (*Id.* ¶ 12.) Defendants’ Counsel and Class Counsel reviewed the calculations. The settlement payment amount, number of workweeks, and estimated PAGA Payments were printed in the Notices. (*Id.*)

Analytics established a toll-free phone number of (855) 730-3377, a case website at www.ABDOWageSettlement.com and an email box at ABDOWageSettlement@noticeadministrator.com to provide assistance and information to Settlement Class and Collective Members. The phone number, website, password to the website and email address were included in the Notice. (*Id.* ¶ 13.) The case website allowed Settlement Class and Collective Members to elect an electronic payment option. (*Id.*)

On August 30, 2024, Analytics mailed the Notice to the most current mailing address of 2,378 Settlement Class and Collective Members via USPS First Class Mail. A copy of the Notice is attached

1 as Exhibit 1 to the Barazesh Decl. On the same date, notice was sent to 2,169 email addresses
2 associated with 2,095 Settlement Class and Collective Members. 2,015 (96.18%) emails were
3 delivered to 1,953 Settlement Class and Collective Members. (*Id.* ¶ 14.)

4 If a Notice was returned by the USPS as undeliverable and without a forwarding address,
5 Analytics performed an advanced address search on these addresses by using Experian, a reputable
6 research tool. Analytics used the name and previous address to locate a current address. 320 Notices
7 were returned to Analytics as undeliverable by USPS. From the address research, Analytics located
8 250 updated addresses and Notices were mailed to the updated addresses. Analytics has calculated
9 that 2,350 (98.82%) Settlement Class and Collective Members received Notice by mail and/or email.
10 (*Id.* ¶ 16.)

11 Settlement Class and Collective Members could dispute the number of workweeks with which
12 they were credited, by contacting Analytics and submitting a dispute by October 14, 2024. Zero
13 disputes were received by Analytics. (*Id.* ¶ 18.) Class Action Members could opt out of the proposed
14 Settlement by mailing a signed statement requesting exclusion from the Class to Analytics
15 postmarked by October 14, 2024. Zero (0) requests for exclusion were received by Analytics. (*Id.* ¶
16 19.) Class Action Members could object to the proposed Settlement by mailing a written statement
17 objecting to the settlement to Analytics postmarked by October 14, 2024. Zero (0) objections were
18 received by Analytics. (*Id.* ¶ 20.)

19 Following final approval of the Settlement, Analytics will handle distribution of the Gross
20 Settlement Amount in accordance with the Settlement Agreement and the Court's order. (*Id.* ¶ 22.) A
21 Qualified Settlement Fund (QSF) account will be established by Analytics for receipt of the Total
22 Settlement Amount in this matter. All payments and respective tax reporting will be paid and reported
23 under the QSF. (*Id.* ¶ 23.) Analytics' work in connection with this matter will continue with the
24 issuance and mailing of the settlement checks, the issuance of electronic payments, and to do the
25 necessary tax reporting for the settlement fund. (*Id.* ¶ 30.)

26 Here, the best practicable means for disseminating notice of the Settlement terms to Settlement
27 Class Members was followed in the present action. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S.

797, 812; *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) The Court may therefore proceed to determine the fairness, adequacy and reasonableness of the Settlement and order its final approval, secure in the knowledge that absent Settlement Class Members have been given ample opportunity to participate fully in the Settlement’s share determination, exclusion, objection and/or approval process.

III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

Court approval is required for the settlement of a class action. (*See* Cal. Rules of Court, rule 3.769.) The court has broad discretion in reviewing a proposed class settlement for approval. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 234–35.) Approval of a class action settlement may be reversed only upon a showing of clear abuse of discretion. (*Id.* at p. 235; *see also Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127–28.) Final approval is warranted when “the interests of the class are better served by the settlement than by further litigation.” (Ann. Manual Complex Lit. (4th ed. 2023) § 21.61 at p. 309.) The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 273, 277–81; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 52; 4 Newberg and Rubenstein on Class Actions (6th ed. 2023) § 13:1.)

While the Court has broad discretion in reviewing and approving class settlements, its role is limited. In reviewing the fairness of a class action settlement, “[d]ue regard . . . should be given to what is otherwise a private consensual agreement between the parties. The inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

1 The Settlement here readily meets this standard. Considering all the circumstances, the
2 Settlement will finally conclude the litigation against Defendants with a result that is favorable to the
3 Class.

4 **A. The Settlement Terms Are Presumptively Fair, Reasonable, and Adequate**
5 **Based on the Process That Produced The Settlement and the Absence of Any**
6 **Objections**

7 This Settlement is presumptively fair and should be approved. A court should presume a class
8 settlement is fair where “(1) the settlement is reached through arms-length bargaining; (2)
9 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
10 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk*,
11 *supra*, 48 Cal.App.4th at p. 1802.) All of these factors are present here.

12 First, the settlement negotiations were thorough and occurred at arm’s length. As set forth in
13 Plaintiffs’ Motion for Preliminary Approval and briefly above, the Settlement was agreed upon
14 following an extensive review of the facts and law in this case. (*Id.*; *Kullar*, 168 Cal.App.4th at p.
15 129–31.) Class Counsel further analyzed the potential damages that might be recovered following the
16 exchange of documents and information through the ADR process with Defendants as described
17 above. (See Schalman-Bergen Decl. ¶¶ 25–28). Plaintiffs used this information to perform an analysis
18 of the potential damages arising from the claims made in this case. (*Id.* ¶ 27.)

19 Moreover, the allocation plan, which was preliminarily approved as fair and reasonable,
20 warrants final approval. “The standard of review requires only an allocation plan that has a reasonable,
21 rational basis; it does not require the best possible plan of allocation.” (See *In re Cathode Ray Tube*
22 *CRT Antitrust Litig.* (N.D. Cal. Nov. 16, 2016, No. 1917) 2016 WL 6778406, at *3 (citation and
23 internal quotation marks omitted) (approving settlement allocation plan, observing that “although it
24 is possible that a more precise allocation plan could be fashioned, undertaking such an effort would
25 be time-consuming and costly”); accord *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, &*
26 *Prod. Liab. Litig.* (N.D. Cal. May 17, 2017, No. MDL 2672 CRB (JSC)) 2017 WL 2212780, *aff’d*
27 (9th Cir. 2018) 746 F.Appx. 655. Additionally, “the fact that [a] plan of allocation is recommended
28 by experienced and competent counsel further cuts in favor of approving [a] plan of allocation.” (See

1 *Gaudin v. Saxon Mortg. Servs., Inc.* (N.D. Cal. Nov. 23, 2015, No. 11-cv-01663-JST) 2015 WL
2 7454183, at *8 (alterations, quotation marks, and citation omitted).)

3 Here, a brief review of the Settlement reveals the fairness of its terms. (*See generally*
4 Agreement.) The estimated Net Settlement Amount of \$1,445,000 and PAGA Amount of \$70,000
5 (for a total of \$1,462,500), derived from a Total Settlement Amount of \$2,364,000, will result in fair
6 and just relief to all Settlement Class Members. (*Id.*) The Settlement Agreement provides that the
7 settlement proceeds will be allocated amongst the Class and Collective Action Members in a manner
8 that recognizes the amount of time that each individual class member worked for a particular DSP
9 Defendant during the Class Period, as each Class and Collective Action Member will be credited for
10 the number of weeks that he or she worked for a particular DSP Defendant. (*Id.* ¶ 81.) This ensures
11 that longer-tenured workers receive a greater recovery, which is fair, reasonable, and adequate.
12 Additionally, as laid out fully in Plaintiffs' Motion for Preliminary Approval, the allocation of
13 \$70,000 to PAGA penalties is in line with comparable settlements in other class actions in California
14 and maximizes payments to individual class members while furthering the public policies underlying
15 PAGA. For all of these reasons, and as discussed herein, the settlement is fair, reasonable, and
16 adequate and well within the range of reasonableness.

17 Additionally, the Settlement Class Members, who stand to benefit monetarily from this
18 Settlement after alleged wage and hour violations that last occurred several years ago, have now had
19 an opportunity to weigh in. After all Settlement Class Members have received notice and an
20 opportunity to be heard, zero (0) Settlement Class Members requested exclusion from the Settlement.
21 The Settlement is therefore presumptively fair.

22 **B. The *Kullar* Factors Support Final Approval**

23 The Court should grant final approval of the Settlement in this case, based upon the following
24 factors, set out in *Kullar v. Foot Locker Retail, Inc.*, which evidence the fairness, reasonableness and
25 adequacy of the Settlement: (1) the strength of the Plaintiffs' case balanced against amount offered
26 in settlement; (2) the risk, expense, complexity and likely duration of further litigation as well as the
27 risk of maintaining class action status through trial; (3) the extent of discovery completed and the

stage of the proceedings when settlement was reached; (4) the experience and views of counsel; (5) the presence of a governmental participant; and (6) the reaction of the Class. (*Kullar, supra*, 168 Cal.App.4th at p. 128; *Wershba, supra*, 91 Cal.App.4th at p. 244–45; *Dunk, supra*, 48 Cal.App.4th at p. 1801; *accord Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336–37.).

1. The Value of the Settlement Favors Final Approval

The “most important” factor in evaluating the fairness of a class action settlement involves comparing the strength of the plaintiffs’ case against the amount offered in the settlement. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407–408.) The Settlement is well within the range of reasonableness and brings significant value to Settlement Class Members. This factor supports final approval in this case.

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. The recovery here of \$2,364,000 falls within the range of reasonableness, when considering the issues and risks related to liability and class certification, and also considering the case law regarding fair, reasonable, and adequate settlements.¹² “Even a fractional recovery of the possible maximum recovery amount may be fair and adequate in light of the uncertainties of trial and difficulties in proving the case.” *Millan v. Cascade Water Servs. Inc.* (E.D. Cal. 2015) 310 F.R.D. 593, 611.¹³

¹² *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest in avoiding litigation.”); *Officers for Justice v. Civil Service Comm’n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery [does] not ... render the settlement inadequate or unfair.”).

¹³ *See also In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per

Here, the Settlement provides a Net Settlement Amount of approximately \$1,445,000 for all Settlement Class and Collective Members.¹⁴ The Net Settlement Amount attributable to each DSP Defendant will be allocated proportionately among and paid to Eligible Class Members who were paid by that DSP Defendant, exclusive of Class Counsel’s Fees and Costs, Class Representatives’ Enhancement Awards, PAGA Payment, and Settlement Administration Costs. For all Settlement Class and Collective Members, the average Settlement Award is \$615.01 with a high of \$4,972.44. (Barazesh Decl. ¶ 26.) The average PAGA Payment is \$29.26. (*Id.*)

As described in Plaintiffs’ Motion for Preliminary Approval, Class Counsel diligently and effectively investigated Plaintiffs’ claims and assessed Defendants’ arguments involving discovery, decertification, and trial, including extensively analyzing the data exchanged in connection with the structured ADR process. Class Counsel’s detailed exposure model for each DSP calculated: 1) a potential range for settlement of overtime claims of \$0 (if Defendants won on their argument that all due overtime was paid) to an estimated maximum unliquidated amount of approximately \$2,667,669 for all of the DSPs at issue; 2) a potential range for settlement of claims related to meal and rest breaks of \$0 (if Defendants won on their argument that there were no meal and rest break violations) to an estimated maximum range of \$2,957,324 (one violation per day) to \$5,914,649 (two violations per day); 3) potential for significant PAGA penalties and derivative claims, as well as the possibility that

se render the settlement inadequate or unfair.”) (citation omitted); *Ramirez v. Merrill Gardens, LLC* (E.D. Cal. Jan. 10, 2024, No. 1:22-CV-00542-SAB) 2024 WL 115216, at *18 (same, approving 7.9% of the total exposure and noting that it “is not, on its face, outside the bounds or range of reasonableness, and is higher than the valuation approved in other class actions, or in line with many approved settlements.”); *Perez v. CVS Health Corp.* (E.D. Cal. June 11, 2021, No. 1:19-CV-00449) 2021 WL 2402950, at *6 (finding “2.5 percent recovery rate to be reasonable even though it is at the low end of the range of percentage recoveries”); *Balderas v. Massage Envy Franchising, LLC* (N.D. Cal. July 21, 2014, No. 12-CV-06327) 2014 WL 3610945, at *5 (finding approximately 8% recovery rate within range of possible approval based on risks and expense of continued litigation); *Ma v. Covidien Holding, Inc.* (C.D. Cal. Jan. 31, 2014, No. 12-CV-02161) 2014 WL 360196, at *5 (granting preliminary approval of wage and hour settlement for 9.1% as within “range of reasonableness”); *Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013, No. 11-CV-1123) 2013 WL 12371622, at *6 (granting final approval in wage and hour action where settlement encompassed between 4.4% and 5% of the maximum estimated liability figure).

¹⁴ PAGA Members will also receive a *pro rata* share of the Net PAGA Amount of \$17,500.

Defendants could defeat the underlying claims and the fact that courts have the discretion to reduce PAGA penalties.

Under these circumstances, considering the risk of proceeding through litigation and trial, and given that the settlement will provide every Settlement Class Member automatically with a check for alleged unpaid wages without the need to go through a lengthy trial process, the proposed settlement falls within the range of reasonableness and supports this Court granting preliminary approval.

2. The Settlement Avoids the Risks Inherent in Continued Litigation

The reasonableness of the Settlement is further underscored by the fact that Defendants asserted legal and factual grounds available to defend this action. (Agreement ¶ 6.) Defendants deny liability or wrongdoing associated with the claims asserted, dispute the damages and penalties claimed by Plaintiffs, and further contend that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class, collective action, or representative treatment. (*Id.* ¶ 66.) This Settlement is a compromise of claims.

Defendants contend, among other things, that, at all times, they have complied with all applicable state, federal and local laws related to the Class Members' employment. (*Id.* ¶ 6.) Amazon further denies any joint employer relationship with any of the DSPs or that it employed any of the Class Members for any purposes. (*Id.*) Even though Class Counsel believe that Plaintiffs' claims are meritorious, it is clear in this case that there remain many contested issues. Plaintiffs would face other significant risks if the litigation were to proceed to trial, including defeating certain claimed arbitration agreements that purport to require them to proceed individually in arbitration.¹⁵ If arbitration is not compelled, a Motion for Class Certification as well as conditional certification under the FLSA would be vigorously contested by Defendants. Plaintiffs would then need to establish class-wide liability and prove issues regarding damages and penalties. Such efforts would take many years and would necessitate expert testimony and additional litigation. (Schalman-Bergen Decl. ¶ 30.)

¹⁵ While Plaintiffs assert that such workers are exempt under Section 1 of the FAA and that California law prohibits class action waivers, the settlement of this action at this stage on a classwide basis is preferable to the litigation and likely appeals that would ensue had a settlement not been reached.

1 Additionally, Plaintiffs' derivative claims regarding waiting time penalties, accurate records, and
2 wage statements rise and fall with Plaintiffs' other wage payment claims. For example, Plaintiffs
3 would recover nothing under Labor Code § 203 if they were unable to prove the underlying claims or
4 defeat a "good faith" dispute defense. (See Cal. Code Regs. Tit. 8, § 13520.) While Plaintiffs believe
5 that they would prevail on these issues, Plaintiffs recognize the risk that a fact finder may find for
6 Defendants on any of the above issues, which could reduce any potential damages award.

7 At bottom, uncertainties at the time of settlement, particularly those which go to fundamental
8 legal issues, favor approval. (See *Glass v. UBS Fin. Servs. Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-
9 4068 MMC) 2007 WL 221862) Accordingly, the Settlement provides prompt relief for Settlement
10 Class Members, while avoiding legal and factual hurdles that otherwise may have prevented them
11 from obtaining any recovery whatsoever. And here, receiving certain compensation after years of
12 negotiations is preferable to an uncertain result that might take a number of additional years to proceed
13 to trial and through appeal. Thus, the proposed Settlement confers significant and timely relief without
14 further delay by eliminating the substantial risk of Settlement Class Members receiving no recovery
15 whatsoever.

16 **3. Plaintiffs Conducted Thorough Investigation Prior to Entering Into**
17 **Settlement, and Were Assisted in Evaluating and Agreeing on**
18 **Settlement Terms by Experienced Mediators**

19 Over the course of several years, the parties engaged in settlement discussions and
20 negotiations, as described above and in Plaintiffs' Motion for Preliminary Approval. To facilitate
21 settlement negotiations, Class Counsel investigated the applicable law and the facts in this case and
22 analyzed the potential damages that might be recovered following the exchange of documents and
23 information with Defendants as described above. Plaintiffs used this information to perform analyses
24 of the potential damages arising from the claims at issue in the action.

25 The Settlement was reached only after numerous conferences between representatives of the
26 parties and multiple in-person mediation sessions, overseen by two experienced wage and hour
27 mediators. Thus, prior to entering into the Settlement, counsel for the parties fully investigated the

1 law as applied to the facts discovered regarding Plaintiffs’ alleged Class claims, and potential defenses
2 thereto, and the damages claimed by the Plaintiffs on behalf of the Settlement Class and Collective.

3 **4. Class Counsels’ Experience and Views Favor Final Approval**

4 Class Counsel are experienced and respected class action litigators, who have significant
5 experience in litigating cases involving DAs against other Amazon Delivery Service Providers over
6 a series of years. (Schalman-Bergen Decl. ¶¶ 4–15.) In their experience, Class Counsel believe the
7 settlement is fair, adequate, and reasonable. “‘Great weight’ is accorded to the recommendation of
8 counsel, who are most closely acquainted with the facts of the underlying litigation.” (*Nat’l Rural*
9 *Tele. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528. (citation omitted)). Counsel “are
10 better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome
11 in the litigation.” (*Id.*, quoting *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378).
12 “[A]bsent fraud, collusion, or the like, [the court] should be hesitant to substitute its own judgment
13 for that of counsel.” (*Id.*; see also *Dunk, supra*, 48 Cal.App.4th at p.1802.)

14 The proposed Class Counsel is comprised of three groups of law firms, all of whom were
15 retained by clients who performed work for the DSPs delivering packages to customers of
16 Amazon.com who all complained of similar wage violations. Class Counsel are highly experienced
17 in complex and class action litigation, including with respect to claims involving Delivery Associates
18 and Delivery Service Providers. The attorneys working on this case have been appointed class counsel
19 and lead counsel through both certification and settlement of numerous wage and hour class actions.
20 (See generally Declarations of Counsel.) Class Counsels’ experience in wage and hour class actions
21 was integral in evaluating the strengths and weaknesses of the case and the reasonableness of the
22 Settlement. This factor supports final approval.

23 **5. The Lack of Governmental Participation Favors Final Approval**

24 The California LWDA declined to investigate the claims alleged by Plaintiffs. Pursuant to
25 Plaintiffs’ PAGA claim, the LWDA is to receive \$52,500 from the Settlement fund. (Agreement ¶
26 78(b)(ii).) This factor favors approval.

1 **6. Class Members’ Positive Reaction to the Settlement Favors Final**
2 **Approval**

3 As noted, there were zero (0) objections to the Settlement and zero (0) Settlement Class
4 Members requested exclusion. The Court should construe this as a strong indication of Class
5 Members’ overwhelming support for the Settlement. Accordingly, the Settlement as a whole is
6 presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the
7 Settlement in its entirety. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)

8 **IV. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT**

9 Pursuant to Cal. Lab. Code, § 2699(1)(2), a settlement of a civil action brought under the
10 PAGA statute must be submitted to the LWDA and must be approved by the court. In *Moniz v. Adecco*
11 *USA, Inc.*, the court found that “a trial court should evaluate a PAGA settlement to determine whether
12 it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
13 violations, deter future ones, and to maximize enforcement of state labor laws.” (2021) 72
14 Cal.App.5th 56, 77. Where a settlement resolves both class and PAGA claims, courts examine the
15 settlement as a whole and the amount allocated to PAGA, including the amount distributed to the
16 LWDA. (*O’Connor v. Uber Techs., Inc.* (N. D. Cal. 2016) 201 F. Supp. 3d 1110, 1134–35.)

17 Plaintiffs’ counsel submitted the proposed settlement to the LWDA as required by the Labor
18 Code. (Schalman-Bergen Decl. ¶ 32.) The proposed settlement allocates \$70,000.00 for civil penalties
19 pursuant to PAGA, with seventy-five percent (75%) of the allocation to be paid to the LWDA.

20 Plaintiffs’ claims for civil penalties under PAGA, as well as derivative claims regarding
21 waiting time penalties, accurate records, and wage statements, all were predicated on proof of an
22 underlying violation(s) of the California Labor Code. Thus, the existence of these claims was tied to
23 the risks of failing to prove California Labor Code violations for off the clock time and meal and rest
24 breaks. Plaintiffs’ damages analysis included potential for these penalties and derivative claims,
25 which, given the penalties associated with these claims, was significant; however, Plaintiffs
26 acknowledge that the total potential exposure associated with these derivative claims does not

necessarily represent the realistic value of those claims for the reasons already stated. Plaintiffs also considered that courts have the discretion to reduce PAGA penalties.¹⁶

Plaintiffs submit that the negotiated settlement in this matter is reasonable and in line with comparable settlements in other class actions in California, including the recent approval in *Brown v. Synctruck*, MSC18-02499 in which the Costa County California Superior Court approved \$60,000 allocation of PAGA Payments from a \$2,750,000 Gross Settlement Fund (2.1%), (See *Synctruck Settlement Agreement and Final Approval Order*, Ex. 3 to Schalman-Bergen Decl.), as well as the recent approval in *Prater et al v. On Courier 365, Inc.*, 20-CIV-02814 in which the San Mateo County California Superior Court approved \$100,000 allocation of PAGA payments from a \$4,500,000 Gross Settlement Fund (2.2%), (See *On Courier Settlement Agreement and Final Approval Order*, Ex. 4 to Schalman-Bergen Decl.).¹⁷

¹⁶ See, e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517 (“Rather than imposing the full penalty, . . . which the court noted in this instance would be unjust, arbitrary, and oppressive, the court imposed a penalty of only \$5 per violation.”); *Barsegian v. Gilead Sciences, Inc.* (Super. Ct. L.A. County July 8, 2020, No. BC714686) (approving PAGA penalties of \$3.87 per pay period, in a case involving claims of daily unpaid “on-call” time and meal and rest period violations); *Heredia v. Eddie Bauer LLC* (N.D. Cal. Apr. 17, 2020, No. 5:16-cv-06236-BLF) (approving PAGA penalties of \$18.83 per pay period, in case alleging employees were forced to work off the clock for a few minutes each day); *Kaanaana v. Barrett Bus. Servs., Inc.* (2018) 29 Cal.App.5th 778, 788, review granted on other grounds (noting that the trial court “exercised its discretion to reduce the [PAGA] penalties to 13 percent of the full amount [requested, because] [o]n average, plaintiffs were deprived of 13 percent of the 30-minute meal period”); *Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County, May 20, 2013, No. BC471369) 2013 WL 2917624, at *2 (approving PAGA penalties averaging \$7.49 per aggrieved employee); *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County, Mar. 12, 2013, No. BC485259) 2013 WL 1182822 (approving PAGA penalties averaging \$3.33 per person).

¹⁷ See also *Mondrian v. Trius Trucking, Inc.*, (E.D. Cal. Oct. 7, 2022, No. 1:19-CV-00884) 2022 WL 6226843, at *8 (approving PAGA allocation of \$10,000 out of \$995,000 settlement (1 percent)); *Erami v. JPMorgan Chase Bank* (C.D. Cal. Dec. 3, 2018, No. CV157728PSGPLAX) 2018 WL 11352374, at *6 (approving PAGA allocation of \$100,000 out of \$8,333,333 settlement (1.2 percent)); *Turner v. Motel 6 Operating L.P.* (C.D. Cal. Nov. 6, 2018, No. CV 17-2544 PSG (SSX)) 2018 WL 6977474, at *7 (approving PAGA allocation of \$20,000 out of \$1,364,752.09 settlement (1.4 percent)); *Dearaujo v. Regis Corp.* (E.D. Cal. July, 21, 2017, No. 2:14-CV-01408) 2017 WL 3116626, at *3 (granting final approval of \$1,950,00 gross settlement with \$10,000 PAGA payment); *Ahmed v. Beverly Health and Rehabilitation Servs., Inc.* (E.D. Cal. Feb. 7, 2018, No. CV 2:16-1747 WBS KJN) 2018 WL 746393, at *10 (approving 1% of gross settlement as PAGA settlement); *Moore v. PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015, No. 5:12-CV-03577-EJD) 2015 WL 5439000, at *8

Notably, courts have held that where significant non-PAGA amounts are being paid to class members, only a small amount, or even no amount, must necessarily be allocated and distributed to the LWDA. (See, e.g., *Nordstrom Commissions Cases* (2010) 186 Cal.App.4th 576, 589 (affirming a settlement allocating \$0 of \$6.4 million settlement to PAGA); *Smith v. Am. Greetings Corp.* (N.D. Cal. May 19, 2016, No. 14-cv-02577-JST) 2016 WL 2909429 (granting final approval of class action settlement allocating \$37,500 of \$4 million settlement to PAGA); *Willner v. Manpower Inc.* (N.D. Cal. June 22, 2015, No. 11-cv-02846-JST) 2015 WL 3863625 (granting final approval of a class settlement allocating \$65,625 of \$8.75 million settlement to PAGA); *Chu, supra*, 2011 WL 672645 (approving \$10,000 PAGA allocation in \$6.9 million settlement).)

Allocating less of the settlement to PAGA penalties is justified because it maximizes payments to individual class members and furthers the public policies underlying PAGA by providing a robust remedy for alleged violations of the California Labor Code. (See *Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021, No. 2:19-CV-00218 WBS AC) 2021 WL 1122390, at *5.) If a higher amount is allocated to PAGA, in this case, the burden to pay civil penalties would effectively shift to the Settlement Class Members because a higher allocation would reduce the amount that the Settlement

(approving total PAGA allocation that was 0.5% of \$10,000,000 gross settlement); *Hicks v. Toys ‘R’ Us–Delaware, Inc.* (C.D. Cal. Sept. 2, 2014, No. CV13-1302-DSF JCGX) 2014 WL 4703915, at *1 (approving PAGA settlement of \$5,000 or 0.12% of the total settlement amount); *Lusby v. Gamestop Inc.* (N.D. Cal. 2013) 297 F.R.D. 400, 407 (approving total PAGA allocation that was 0.67% of \$750,000 gross settlement); *Franco v. Ruiz Food Prod., Inc.* (E.D. Cal. Nov. 27, 2012, No. 1:10-CV-02354-SKO) 2012 WL 5941801, at *14 (approving PAGA allocation of \$10,000 out of \$2,500,000 settlement (0.4 percent)); *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012, No. 1:10-CV-0324 AWI SKO) 2012 WL 5364575, at *7 (\$3.9 million settlement allocating \$10,000 to PAGA penalties)); *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011, No. C-05-4526-MHP), 2011 WL 672645, at *1 (approving PAGA allocation of \$10,000 out of \$6,900,000 gross settlement (0.14 percent)); *In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009, No. 07-CV-0118-BTM JMA) 2009 WL 995864, at *1 (approving PAGA settlement of 2 percent); *Hopson v. Hanesbrands Inc.* (N.D. Cal. Aug. 8, 2008, No. CV-08-0844 EDL) 2008 WL 3385452, at *1 (approving a PAGA settlement of 0.3 percent); *Van Kempen v. Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017, No. 15-CV-00660-HSG) 2017 WL 3670787 (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement); *Slavkov v. First Water Heater Partners I, LP* (N.D. Cal. July 25, 2017, No. 14-CV-04324-JST) 2017 WL 3834873 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).

Class Members would ultimately receive under the proposed settlement. Accordingly, the proposed allocation of \$70,000.00 to PAGA, \$52,500.00 of which is being paid to the LWDA, strikes a balance between the interest of all the parties, including the LWDA and general public, by penalizing the employer and providing relief to the Settlement Class Members. As such, the proposed settlement is fair, adequate, and reasonable. Plaintiffs thus respectfully request that the Court approve the proposed LWDA payment.

V. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS AND COLLECTIVE

In its Preliminary Approval Order, the Court evaluated the propriety of class certification and conditionally certified the Settlement Class and Collective Members as follows:

- Plaintiff Randy Curran and all non-exempt Delivery Associates who were paid by ADCS to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA for settlement purposes only;
- Plaintiff Cierra Woolen and all non-exempt Delivery Associates who were paid by BZCY to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA for settlement purposes only;
- Plaintiffs Luisa Mazon, Roberto Ramirez, Linda Fang, and all non-exempt Delivery Associates who were paid by DROT to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA for settlement purposes only;
- Plaintiff Alexis Bell and all non-exempt Delivery Associates who were paid by ONDT to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are similarly situated pursuant to 29 U.S.C. § 216(b) of the FLSA for settlement purposes only;
- Plaintiff Randy Curran and all non-exempt Delivery Associates who were paid by ADCS to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are preliminarily certified pursuant to Code of Civil Procedure Section 382 for the purpose of settlement only;
- Plaintiff Cierra Woolen and all non-exempt Delivery Associates who were paid by BZCY to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are preliminarily certified pursuant to Code of Civil Procedure Section 382 for the purpose of settlement only;
- Plaintiffs Luisa Mazon, Roberto Ramirez, Linda Fang, and all non-exempt Delivery Associates who were paid by DROT to deliver packages to customers of Amazon.com in California from September 6, 2018 through February 3, 2023, are preliminarily certified pursuant to Code of Civil Procedure Section 382 for the purpose of settlement only;
- Plaintiff Alexis Bell and all non-exempt Delivery Associates who were paid by ONDT to deliver packages to customers of Amazon.com in California from September 6, 2018

through February 3, 2023, are preliminarily certified pursuant to Code of Civil Procedure Section 382 for the purpose of settlement only;

- The PAGA Members consist of all non-exempt Delivery Associates who were paid by ACDS, BZCY, DROT, and ONDT to deliver packages to customers of Amazon.com in California at any time from July 17, 2022 through February 3, 2023.

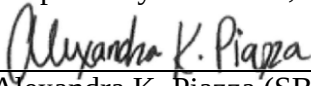
There have been no developments since preliminary approval that would warrant a different finding. Accordingly, this Court should finalize its prior conditional grant of class and collective certification for settlement purposes.

VI. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant this Motion for Final Approval of the Settlement Agreement and enter an Order consistent with the agreed Proposed Order submitted herewith.

Dated: November 1, 2024

Respectfully submitted,


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