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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

VENANCIO CARRERA, as an individual and on behalf of all others similarly situated, Plaintiffs, vs. TRAIL LINES, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 23STCV23347 *[Assigned for all purposes to the Hon. Elihu M. Berle, Dept. SSC-6]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: January 15, 2025 Time: 9:00 a.m. Dept.: SSC-6 Action Filed: September 26, 2023 Trial Date: None Set

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 January 15, 2025 at 9:00 a.m. in Department SSC-6 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012, Plaintiff Venancio Carrera ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the following Settlement Class defined as follows:

   All individuals whom Defendant Trail Lines, Inc. classified as independent contractors and who worked for Defendant in California at any time during the Class Period.

   Class Period means the period of time starting on September 26, 2019 and ending on the date that the Court enters an order preliminarily approving the Settlement.
3. Preliminary appointment of Plaintiff Venancio Carrera as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice"), which is attached to the Settlement as Exhibit A, and an order that it be disseminated to the proposed Settlement Class Members as provided in the Settlement Agreement.

This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Venancio

Carrera, and Jodey Lawrence of Phoenix Class Action Administration Solutions, 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 5, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: ______________________________
Scott Lidman
Attorney for Plaintiff
VENANCIO CARRERA

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MEMORANDUM OF POINTS AND AUTHORITIES[1]

I. INTRODUCTION

Plaintiff Venancio Carrera ("Plaintiff") brought this class and representative action against Defendant Trail Lines, Inc. (hereinafter "Trail Lines" or "Defendant") alleging various wage and hour and related violations. Plaintiff's primary claim/allegation is that Trail Lines misclassified its truck drivers as independent contractors and, as a result, allegedly committed the following wage and hour violations: (1) failed to pay all minimum wages owed; (2) failed to provide accurate, itemized wage statements; (3) failed to reimburse necessary business expenses; (4) unlawfully deducted from employees' wages; (5) failed to pay all wages upon termination; (6) engaged in unlawful business practices; and (7) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this <u>non-reversionary</u>, class action settlement,[2] in which Trail Lines has agreed to pay a total settlement amount of Three Hundred Eighty-One Thousand Seven Hundred Fifty Dollars and Zero Cents ($381,750.00), of which Defendant ***already paid*** Twenty-One Thousand Seven Hundred Fifty Dollars and Zero Cents ($21,750.00) to certain Settlement Class Members pursuant to those Settlement Class Members entering into release agreements with Defendant after the filing of this lawsuit, and which was a direct result of the filing of the instant lawsuit, on behalf of the following Settlement Class:

> All individuals whom Defendant Trial Lines, Inc. classified as independent contractors and who worked for Defendant in California at any time during the Class Period.
>
> Class Period means the period of time starting on September 26, 2019 and ending on the date that the Court enters an order preliminarily approving the Settlement.

Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement because all Settlement Class Members will automatically receive a payment unless they

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[1] Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court allow Plaintiff 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 21 pages in length.

[2] The Class Action and PAGA Settlement Agreement and Class Notice ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 2. All defined terms in this motion have the same definitions as used in the Settlement.

affirmatively opt-out.

After deducting administration costs, Plaintiff's service payment, attorneys' fees and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount ("NSA") of approximately $196,005.00 will be distributed to all Settlement Class Members who do not opt-out of the Settlement. There were approximately 69 Settlement Class Members as of the date of mediation, and including the $5,000 for 44 Aggrieved Employees, the average payment to participating Settlement Class Members is estimated to be approximately **$2,840.65**.

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

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Trail Lines specializes in less-than-truckload (LTL) and truckload services from California to all points in the continental United States and Canadian provinces. *See* Declaration of Scott Lidman ("Lidman Decl."), ¶ 10. Plaintiff, a former employee, was employed by Trail Lines as a delivery driver from approximately March 2021 through approximately May 18, 2022. *See* Declaration of Venancio Carrera ("Carrera Decl."), ¶ 2. Plaintiff was classified as an independent contractor and was compensated based on mileage and stops. *Id*.

B. BRIEF PROCEDURAL HISTORY

On September 26, 2023, Plaintiff filed a putative class action complaint against Trail Lines. Lidman Decl., ¶ 10. On September 26, 2023, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Trail Lines advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id*., **Exhibit 1**. On December 4, 2023, after exhausting his administrative remedies, Plaintiff filed a First Amended Class and Representative Action Complaint adding a cause of action for civil penalties under the PAGA. *Id*.

Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion, and will submit a supplemental declaration to the Court evidencing the submission. Lidman Decl., ¶ 32.

III. DUNK/KULLAR ANALYSIS

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

A. INVESTIGATION AND DISCOVERY

In advance of mediation, Trail Lines produced the independent contractor agreements it used, a sampling of timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and information relevant to the claims alleged. Lidman Decl., ¶ 11. Trail Lines also provided sufficient information for Plaintiff to calculate the necessary metrics, including without limitation, class size, number of workweeks and pay periods. *Id*. After a detailed review of the documents and data produced by Trail Lines, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and Trail Lines's defenses thereto. *Id*.

B. ARMS-LENGTH NEGOTIATIONS

On July 17, 2024, a mediation was held with Todd Smith, Esq., a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*. Ultimately, the Parties agreed on a class-wide resolution. *Id*.

C. THE EXPERIENCE AND VIEWS OF COUNSEL

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl., ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-5; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-3; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class

Counsel conducted an in-depth review of Trail Lines's policies, independent contractor agreements, and timekeeping and payroll records, and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Lidman Decl., ¶¶ 10-26. The Settlement was also reached with the assistance of a mediator. *Id*. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of the theories of liability pled is set forth below:

<u>Trail Lines Misclassified Workers as Independent Contractors and Failed to Pay for All Hours Worked</u>: Plaintiff alleges he and the members of the Settlement Class were misclassified as independent contractors and thus were not compensated at least minimum wage for all hours worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges that he and the Settlement Class were employees because Trail Lines exercised a great amount of control over the drivers in performance of their work and the drivers performed work which is within Trail Lines's usual course of business. *Id*. As such, Plaintiff alleges that he and Settlement Class Members were not separately compensated for time spent working on tasks unrelated to driving, including, without limitation, time spent on pre- and post-trip truck inspections, time spent fueling the trucks, time spent completing paperwork, and time spent maintaining or washing the trucks. *Id*. As a result, Trail Lines failed to pay Plaintiff and Settlement Class Members all minimum wages owed. *Id*. With a total of 3,022.32 workweeks at issue for the Settlement Class Members, Plaintiff calculated the potential exposure for the minimum wage claim at $136,004.40 (3022.32 workweeks x 3 hours per week of unpaid minimum wage x $15 average minimum wage). *Id*.

Trail Lines contends that the Settlement Class was properly classified as independent contractors and was compensated appropriately based on the Contractors Operating Agreement. Lidman Decl., ¶ 17. Additionally, Trail Lines contends that even if the drivers were employees, they were still compensated for all minimum wages owed because they were paid for stops and miles and the stop pay included pay for all activities related to a delivery, including pre- and post-trip truck inspections, time spent fueling the trucks, time spent completing paperwork, and time spent maintaining or washing the trucks. *Id*. Lastly, Trail Lines contends that it entered into valid and enforceable release agreements with 63 of the 69 class members, such that there cannot be any liability at all for alleged unpaid minimum wages. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk of non-certification, and an additional 85% to account for Trail Lines's defenses on the merits to arrive at an estimated exposure of $14,280.46. *Id*.

<u>Trail Lines Failed to Reimburse for Necessary Business Expenses and Made Unlawful Deductions</u>: Plaintiff alleges that Trail Lines failed to reimburse the Settlement Class for all business expenses incurred and/or deducted various items from the Settlement Class's pay. Lidman Decl., ¶ 18. Specifically, Trail Lines made various deductions from the pay owed to Settlement Class Members before ultimately paying them and required that Settlement Class Members incur additional significant expenses in order to perform their duties such as equipment charges, OCAC premiums, fuel charged to Trail Lines's discount account, insurance, taxes and licensing. *Id*. Accordingly, Plaintiff calculated Trail Lines's maximum exposure for the alleged unlawful deductions to be approximately $1,208,928.00 ($400 in expenses per week x 3022.32 workweeks). *Id*.

Trail Lines counters that any deductions from wages were lawful and were required or empowered by state or federal law. Lidman Decl., ¶ 19. Trail Lines also asserts that any deductions from wages were expressly authorized in writing by Plaintiff and the Settlement Class. *Id*. Trail Lines further asserts that AB5 does not apply because it qualifies for the business-to-business exception, meaning that the *Borello* test applies which it contends it can satisfy; as such, any deductions were appropriate because the Settlement Class Members were indeed independent contractors. *Id*. Lastly, Trail Lines contends that it entered into valid and enforceable release agreements with 63 of the 69 class members, such that there cannot be any liability at all for alleged unreimbursed expenses. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk of non-certification, and an additional 85% to account for Trail Lines's defenses on the merits to arrive at an estimated exposure of $126,937.44. *Id*.

<u>Trail Lines Issued Inaccurate Itemized Wage Statements</u>: Plaintiff alleges that Trail Lines issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid

minimum wages and unlawful deductions described above. Lidman Decl., ¶ 20. Plaintiff also contends that this conduct violated Labor Code section 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id*. Plaintiff's data analysis reflected that there were approximately 1,187 wage statements issued during the relevant time period. *Id*. Therefore, Plaintiff calculated Trail Lines's maximum exposure for wage statement violations at approximately $116,600.00 (1,187.5 settlement statements x $50 for first violation and $100 for subsequent violations). *Id*.

Trail Lines argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 21. Trail Lines further asserts that AB5 does not apply because it qualifies for the business-to-business exception, meaning that the *Borello* test applies which it contends it can satisfy; as such, it was not required to issue 226-compliant statements because the Settlement Class Members were indeed independent contractors. *Id*. Lastly, Trail Lines contends that it entered into valid and enforceable release agreements with 63 of the 69 class members, such that there cannot be any liability at all for alleged unlawful wage statements. *Id*. As such, Plaintiff discounted the calculated exposure by 30% for a risk of non-certification and an additional 85% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $12,243.00. *Id*.

<u>Trail Lines is Liable for Waiting Time Penalties</u>: Plaintiff alleges that Trail Lines is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all wages upon separation of employment. Lidman Decl., ¶ 22. All 69 of the Settlement Class Members separated their employment during the relevant time period. *Id*. Therefore, Plaintiff calculated Trail Lines's maximum exposure for waiting time penalties at approximately $579,600.00 ($35.00 average hourly rate x 8 hours a day x 30 days x 69 drivers). *Id*.

Trail Lines asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 23. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Trail Lines further asserts that AB5 does not apply because it qualifies for the business-to-business exception, meaning that the *Borello* test applies which it contends it can satisfy; as such, Labor Code section 203 does not apply because the Settlement Class Members were indeed independent contractors. *Id*. Lastly, Trail Lines contends that it entered into valid and enforceable release agreements with 63 of the 69 class members, such that there cannot be liability under Labor Code section 203 for most of the group. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 30% for the risk of non-certification, and an additional 75% to account for Trail Lines's defenses on the merits, to arrive at an estimated exposure of $101,430.00. *Id*.

<u>Trail Lines is Liable for PAGA Civil Penalties</u>: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 24. Specifically, pursuant to Labor Code section 226.8(b)-(c), the potential civil penalty for misclassifying employees as independent contractors can be between $5,000 and $15,000 per violation. With 69 total class members, Plaintiff calculated Trail Lines's potential PAGA exposure to be approximately $1,035,000 ($15,000 x 69 class members). Further, Plaintiff contends that any settlement agreements entered into with class members would be invalid as to the PAGA claim since the individuals did not hold the right to said claim. *Id*.

Trail Lines argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 27; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Trail Lines also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Trail Lines liable for any of Plaintiff's claims, and would start the reduction at the $5,000 exposure rather than $15,000 exposure per violation. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). *Id*. Therefore, Plaintiff discounted the maximum exposure figure by 35% for a risk of being unsuccessful on the merits, and an additional 55% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $302,737.50. *Id*.

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $675,228.40. Lidman Decl., ¶ 26. The proposed settlement of $381,750.00 therefore represents approximately 56.5% of the reasonably forecasted minimum recovery for the Settlement Class. *Id*. Preliminary approval is appropriate as the settlement will provide tangible monetary relief to Settlement Class Members, and will still provide an average recovery to Settlement Class Members of ***<u>over $2,800</u>*** each.

The proposed settlement reflects approximately 56.5% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus, Plaintiff submits that the proposed settlement is within the range of approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has expired.

F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION, AND RISK OF MAINTAINING CLASS ACTION STATUS

Although the parties engaged in informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 31. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling based, at least in part, on the settlement agreements entered into with 63 of the 69 class members. *Id*. Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

/ /

IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

California Rule of Court 3.769 conditions settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

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

A. NUMEROSITY IS SATISFIED.

Here, the proposed Settlement Class consists of 69 members, and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, the class is "ascertainable" because it is defined as "all individuals whom Defendant Trail Lines, Inc. classified as independent contractors and who worked for Defendant in California at any time during the Class Period," which is the period of time starting on September 26, 2019 and ending on the date that the Court enters an order preliminarily approving the settlement. Lidman Decl., ¶ 14. Such members can be identified from Defendant's personnel/business records.

B. COMMONALITY IS SATISFIED.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327.

Here, Plaintiff alleges Settlement Class Members' claims arise from Trail Lines's common, uniform policies and practices that applied to Settlement Class Members during the class period. Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that Trail Lines's common and uniform policies and practices of classifying drivers as independent contractors resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to provide accurate, itemized wage statements; (3)

failure to reimburse necessary business expenses; (4) unlawful deductions from wages; (5) failure to pay all wages owed upon termination; (6) engagement in unlawful business practices; and (7) liability for civil penalties under the PAGA. *Id*. As a result of the common and uniform policies and practices that applied to all Settlement Class Members, their claims involve common questions of law and fact as to whether in fact Trail Lines committed these alleged violations.

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

C. TYPICALITY IS SATISFIED.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, Plaintiff's claims are typical of those held by the members of the proposed Settlement Class. Plaintiff was employed by Trail Lines during the Class Period, classified as an independent contractor, and was subject to Trail Lines's wage and hour policies at issue in this case. *See* Carrera Decl., ¶ 2. Further, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. Carrera Decl., ¶¶ 2-5. Given that Trail Lines's policies and practices applied to all employees classified as independent contractors, Settlement Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, typicality is satisfied.

D. ADEQUACY IS SATISFIED.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the Settlement Class he seeks to represent. Lidman Decl., ¶ 30, Carrera Decl., ¶ 10. Indeed, Plaintiff's interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Haines Decl., ¶¶ 2-8; Moore Decl., ¶¶ 2-4; Gose-Hardy Decl., ¶¶ 2-3.

V. SETTLEMENT AGREEMENT

A. THE BASICS

1. Class Definition and Release Period

The proposed Settlement Class is defined as: all individuals whom Defendant Trail Lines, Inc. classified as independent contractors and who worked for Defendant in California at any time during the Class Period. Settlement ¶ 1.5. For purposes of this Settlement Agreement, the "Class Period" means the period of time starting on September 26, 2019 and ending on the date that the Court enters an order preliminarily approving the Settlement. Settlement ¶ 1.12.

2. Aggrieved Employees and PAGA Period

The proposed Aggrieved Employees are defined as: all individuals whom Defendant Trail Lines, Inc. classified as independent contractors and who worked for Defendant in California at any time during the PAGA Period. Settlement ¶ 1.4. The "PAGA Period" means the period of time starting on September 26, 2022 and the date that the Court grants preliminary approval of the Settlement. Settlement ¶ 1.31.

B. RELEASE OF CLAIMS

1. Scope of Participating Class Members' Release

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties, which means Defendant, its respective former, current and future parent companies, subsidiaries, affiliates, shareholders, members, agents, principals, including Ofer Shitrit, Reuven Spivak and Iris Spivak, heirs, representatives (including, without limitation, any investment bankers, accountants, auditors, consultants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties") , from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the First Amended Complaint and/or ascertained during the course of the lawsuit and which occurred during the Class Period including, without limitation, (1) failure to pay minimum wages owed; (2) failure to provide accurate, itemized wage statements; (3) failure to reimburse necessary business expenses; (4) unlawful deductions from wages; (5) failure to pay all wages owed upon termination; (6) unfair business practices in violation of Business and Professions Code section 17200, *et seq*. premised on the above claims; (7)

violation of or liability under California Labor Code under sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226 *et seq*., 510, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2804, and the relevant Wage Orders issued by the Industrial Welfare Commission; and (8) any and all related claims for attorneys' fees and costs. Settlement, ¶ 5.2.

2. Scope of Aggrieved Employees' Release

All Aggrieved Employees release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the operative First Amended Complaint and/or the PAGA Notice and/or ascertained during the course of the lawsuit and which occurred during the PAGA Period. The claims released include, without limitation: (1) failure to pay minimum wages owed; (2) failure to provide accurate, itemized wage statements; (3) failure to reimburse necessary business expenses; (4) unlawful deductions from wages; (5) failure to pay all wages owed upon termination; and (6) any and all related claims for attorneys' fees and costs. Settlement, ¶ 5.3.

3. Releases Effective Date

The releases described above are effective on the date when Defendant fully funds the Remaining Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Settlement, ¶ 5.

C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Trail Lines will pay a Total Settlement Amount ("TSA") of $381,750.00, consisting of $21,750.00 Trail Lines already paid to certain Class Members pursuant to those certain Class Members entering into release agreements with Defendant after the filing of this Action, and which was a direct result of the filing of the Action ("Paid Settlement Amount"), and $360,000.00 in new money to be paid and funded by Defendant. Lidman Decl., ¶ 13, Exh. 2 (Settlement, ¶ 1.22). Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. Settlement ¶ 4.4.3. Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. Settlement ¶ 7.5.3.

Within thirty (30) days of the Effective Date, Defendant will deposit the "New Settlement Money" ($360,000.00) into the Settlement Administrator's escrow account. Settlement ¶ 4.3. Defendant will not be held in violation of this Settlement Agreement if the Settlement Administrator is unable to timely provide an escrow account that allows Defendant sufficient and reasonable time to process and deposit the settlement funds within thirty (30) days of the Effective Date. The Effective Date means the date by when both of the following have occurred (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court enters Judgment; or (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Settlement ¶ 1.18.

2. <u>Deductions from Gross Settlement Amount</u>

The monetary terms of the Settlement are summarized below:

Total Settlement Amount ("TSA"):	**$381,750.00**
New Settlement Money:	**$360,000.00**
Minus Court-approved attorneys' fees (1/3 of the TSA based on catalyst theory):	$127,250.00
Minus Court-approved, verified costs (up to $30,000.00):	$30,000.00
Minus Court-approved Class Representative Service Award:	$7,500.00
Minus Settlement Administration Costs:	$5,995.00
Minus PAGA payment to the LWDA:	$15,000.00
Net Settlement Amount ("NSA"):	**$196,005.00**
Settlement Class Members	69
Average Individual Payment: NSA/Settlement Class	**$2,840.65**

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the

Settlement results in a Net Settlement Amount ("NSA") of at least $196,005.00 to be paid out to all Settlement Class Members who do not timely opt out. Lidman Decl*.,* ¶ 13, Exh. 2.

Therefore, this calculation of $196,005/69= $2,840.65, assumes the Court approves the requested attorneys' fees, maximum attorneys' costs, service payment, settlement administration costs, and payment to the LWDA. *Id*. This calculation also assumes that all 69 putative class members participate in the settlement and do not submit timely requests for exclusions.

3. Class Representative Service Payment

Incentive awards are typical in class action cases and are intended to compensate class representatives for work done on behalf of the class and to make up for reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Plaintiff will separately apply for a service payment at the time of seeking final approval in the amount of $7,500.00. Lidman Decl., ¶ 29, Exh. 2 (Settlement, ¶ 3.2.1.); Carrera Decl., ¶¶ 2-11. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 29; Carrera Decl., ¶¶ 2-11; Settlement ¶ 3.2.1.

The Class Representative Service Payment awarded by the Court shall be paid by the Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 days after Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

4. Attorneys' Fees and Costs

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the TSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements.

Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will also apply for an attorneys' fees award of one-third of the TSA, which is currently estimated to be $127,250.00, and up to $30,000.00 in verified costs reimbursement. *See* Settlement, ¶ 3.2.2; Lidman Decl., ¶ 27. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 28. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Trail Lines' documents and policies, analyzing Settlement Class members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 27. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers and attending the Final Approval hearing. *Id*.

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Additionally, *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604, 608 (2004), the California Supreme Court held, "California law continues to recognize the catalyst theory and does not require 'a judicially recognized change in the legal relationship between the parties' as a prerequisite for obtaining attorney fees under [CCP] section 1021.5." According to the Court, "In order to obtain attorney fees [in such circumstances]…, a plaintiff must establish that (1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense…; and (3) that the plaintiffs reasonably attempted to settle the litigation." *Id.* Plaintiff satisfies these requirements.

Here, after Plaintiff filed his Complaint, Trail Lines began offering individual settlements to all independent contractors, together with a document that explicitly mentioned this litigation, implicitly acknowledging that this lawsuit was the catalyst for the payments. Lidman Decl., ¶ 12. The document included a release of claims, which also made explicit reference to this lawsuit. Id. In total, Trail Lines paid $21,750.00 as release consideration after this lawsuit was initiated, over and above the monetary relief to be paid under the Settlement. *Id*. In sum, the filing of this lawsuit was the catalyst that activated Trail Lines to provide substantial monetary benefit to its employees. Therefore, it is appropriate to anchor Plaintiff's counsel's fee award on the *total* benefit that was achieved on behalf of Settlement Class members.

Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

5. Payroll Taxes

The Settlement provides that Trail Lines's payroll taxes shall be paid separately from, and in addition to, the Gross Settlement Amount. Settlement ¶¶ 3.1, 4.3.

6. Payment Formula

There were approximately 69 total Settlement Class Members as of the date of mediation, and that count remains the same as Trail Lines no longer uses independent contractor drivers. Lidman Decl., ¶ 12. Sixty-three (63) of the total Settlement Class Members received payment from Defendant pursuant to those certain Settlement Class Members entering into release agreements with Defendant after the filing of this Action. *Id*.

The six (6) Class Members who did not receive any portion of the previously paid Settlement Amount (that is, those who did not receive a prior settlement payment in exchange for signing a release agreement) shall each be paid an amount equal to what they would have received under Defendant's formula used to pay the Paid Settlement Amount. Settlement, ¶ 3.2.4.1. After the six Class Members are allocated their payments, the remaining Net Settlement Amount shall then be divided by the total number of workweeks worked by all Class Members during the Class Period in order to establish the workweek amount. Settlement, ¶ 3.2.4.2. The workweek amount will then be multiplied by the number of workweeks attributable to each Participating Class Member in order to determine the Individual Class Payment due to each Participating Class Member. *Id*.

Additionally, there were approximately 44 Aggrieved Employees. Lidman Decl., ¶ 14.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

Thus, the average Individual PAGA Payment is projected to be approximately **$113.63.**

7. <u>Tax Allocation</u>

For purposes of calculating applicable taxes and withholdings, 33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). Settlement, ¶ 3.2.5. The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. *Id.* The 67% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). *Id.* The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. *Id.*

8. <u>PAGA Penalty</u>

The parties have agreed to a PAGA award of $20,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or $15,000.00. Settlement ¶ 3.2.7. This $20,000.00 represents roughly 5% of the $381,750.00 Total Settlement Amount and is above the range for PAGA claims approved by Courts (0-2%). *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

VI. <u>NOTICE ADMINISTRATION</u>

A. SETTLEMENT ADMINISTRATOR

Phoenix Class Action Administration Solutions ("Phoenix") costs are estimated not to exceed $5,995.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the proposed class size of approximately 69 Settlement Class Members and the costs and expenses associated with administering the notices and distributing the awards. Additionally, Phoenix will translate the Class Notices and mail them in both English and Spanish to Settlement Class Members.

Phoenix has extensive experience administering class action matters. Phoenix has administered complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, through final approval and distribution. Phoenix has developed a system of quality assurance measures, to ensure the highest quality service is provided in our cases and to class members. Lawrence Decl., ¶ 5.

B. CLASS LIST FROM DEFENDANT

No later than 20 calendar days after entry of an order preliminarily approving the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. Settlement, ¶ 4.2. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. *Id.*

C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING

Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. Settlement, ¶ 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation. *Id*.

D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)

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

Moreover, the Class Notice includes the sentence "Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible."

E. PROCESSING OF PAYMENTS

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Settlement, ¶ 4.4.

Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. Settlement, ¶ 4.4. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

F. UNDELIVERABLE SETTLEMENT NOTICES

Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. Settlement, ¶ 7.4.3. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. *Id.* The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. *Id.*

The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). Settlement, ¶ 4.4.1.

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VII. RESPONSES TO SETTLEMENT NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 7.5.1.

B. RE-MAILED NOTICES

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. Settlement, ¶ 7.4.4. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. *Id.*

C. OBJECTION PROCEDURES

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Settlement, ¶ 7.7.1.

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). Settlement, ¶ 7.7.2.

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VIII. DISTRIBUTION OF UNCASHED FUNDS

The Administrator will cancel all checks not cashed by the void date, which will be not less than 180 days after the date of mailing. Settlement ¶ 4.4.1.

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

IX. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: November 5, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: ____________________
Scott Lidman
Attorney for Plaintiff
VENANCIO CARRERA