ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
P. BARTHOLOMEW QUINTANS (SBN 308085)
bart@counselonegroup.com
**COUNSELONE, PC**
9465 Wilshire Boulevard, Suite 300
Beverly Hills, California 90212
Telephone: (310) 277-9945
Facsimile: (424) 277-3727

DANIEL F. GAINES (SBN 251488)
daniel@gaineslawfirm.com
**GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff

Electronically Filed
Superior Court of California
County of San Joaquin
2025-10-10 16:07:49
Clerk: Danielle Jeandebien

Motion for Preliminary Approval of Class Settlement
2025-11-12 9:00AM in 10C

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN JOAQUIN**

| | |
|---|---|
| STEPHEN PRINCE, on behalf of himself and all others similarly situated and on behalf of the general public,<br><br>Plaintiff,<br><br>v.<br><br>CHEEMA FREIGHTLINES LLC, a California limited liability company, and DOES 1 through 10, inclusive,<br><br>Defendants. | Case No.: STK-CV-UOE-2023-0011625<br><br>Assigned for all purposes to:<br>Hon. Jayne Lee, Dept 10C<br><br>**DECLARATION OF ANTHONY J. ORSHANSKY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**<br><br><u>Preliminary Approval Hearing</u><br>Date:<br>Time:<br>Dept.: 10C |

I, Anthony J. Orshansky, declare as follows:

1. I am an attorney licensed to practice law before all courts of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would competently testify to them.

2. I am a shareholder at the law firm of CounselOne, PC ("CounselOne"), counsel of record, along with Gaines & Gaines, APLC, for Plaintiff Stephen Prince ("Plaintiff") in this putative class and representative lawsuit ("Action") against Defendant Cheema Freightlines LLC ("Defendant") (together with Plaintiff, the "Parties").

3. CounselOne and Gaines & Gaines, APLC are referred to herein as "Class Counsel."

4. I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement, filed concurrently herewith, whereby Plaintiff seeks approval of the Stipulation of Class Action and PAGA Settlement ("Settlement Agreement) entered into with Defendant that resolves the claims of Plaintiff and a putative class (hereafter, the "Class" or "Class Members") defined as all current and former non-exempt employees who worked for Defendant in California during the Class Period, which is defined as the period from September 26, 2018 through the date of preliminary approval (or an earlier date at Defendant's discretion under paragraph III(D)(5) of the Settlement Agreement),[1] as well as Plaintiff's claims for penalties on behalf of themselves and similarly-situated aggrieved employees ("Aggrieved Employees") pursuant to California's Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq. ("PAGA"), occurring during the PAGA Period.[2] A true and correct copy of the fully executed Settlement Agreement is attached hereto as **Exhibit 1**.

## SUMMARY OF SETTLEMENT

5. Under the terms of the settlement, Defendant agrees to pay a non-reversionary amount of Four Hundred and Five Thousand Dollars ($405,000) ("Gross Settlement Amount") to settle the claims asserted in the Action. Settlement Agreement ¶ III(D)(7)(a). This amount shall be

---

[1] *See* Settlement Agreement ¶¶ I(C) & (G), III(D)(5).

[2] "PAGA Period" is defined as the period from September 21, 2022 through the date of preliminary approval, or an earlier date at Defendant's discretion under paragraph III(D)(5) of the Settlement Agreement. *See id.* at ¶¶ I(V), III(D)(5).

inclusive of all settlement payments to Participating Class Members (*e.g.*, Class Members who do not opt out of the settlement), the enhancement award to the Class Representative, settlement administration costs to the Settlement Administrator, CPT Group, Inc. ("CPT"), attorneys' fees and costs to Class Counsel, and payment of penalties pursuant to the PAGA, including payment to the California Labor and Workforce Development Agency ("LWDA") and to Aggrieved Employees, but exclusive of employer federal and state payroll taxes. Settlement Agreement ¶ I(O).

6. The amount available for distribution to Participating Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to thirty-five (35%) of the Gross Settlement Amount in attorneys' fees (*i.e.*, $141,750) and up to $15,000 in litigation costs to Class Counsel (Settlement Agreement ¶ III(D)(7)(b));
- Up to $5,000 to the Plaintiff as an enhancement payment in recognition of his service as the Class Representative (*id.* at ¶ III(D)(7)(d));
- Up to $7,500 to the Settlement Administrator to notify members of the Class and administer the settlement (*id.* at ¶¶ I(CC), III(D)(7)(c)); and
- $40,000 in penalties pursuant to the PAGA ("PAGA Penalties"), of which is 75% (or $30,000) is allocated to the LWDA ("LWDA Payment"), and 25% (or $10,000) is allocated to the Aggrieved Employees (*id.* at ¶¶ I(R), III(D)(7)(e)).

The amount remaining after the foregoing deductions, approximately $195,750, is called the "Net Settlement Amount." Settlement Agreement ¶ I(S). The entire Net Settlement Amount will be paid out to Participating Class Members. Participating Class Members will automatically receive payments without the need to submit a claim form, and Aggrieved Employees shall receive their pro rata share of the 25% of the PAGA Penalties irrespective of whether they opt out of the class settlement. Settlement Agreement ¶¶ III(D)(2), (7)(e).

7. If all of the approximate 57 Class Members[3] participate (*i.e.*, do not submit a request for exclusion/opt-out), and assuming hypothetically that distribution was on an individual pro rata basis, then each individual settlement payment would be an estimated $3,434.21 per Class Member.

[3] Using the estimated number of Class Members at the time of mediation.

In actuality, each Participating Class Member will receive a proportional share of the Net Settlement Amount ("Individual Settlement Payment") based on his or her eligible workweeks during the Class Period. *Id.* The Settlement Administrator will determine each Participating Class Member's Individual Settlement Payment based on his or her workweeks worked during the Class Period compared to the total number of workweeks worked by all Participating Class Members during the Class Period. Each Class Member's estimated workweeks worked shall be identified in the Notice. If there are any valid and timely Requests for Exclusion as to the class portion of the settlement, the Settlement Administrator shall increase the payment distributable to Participating Class Members so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward payment to Participating Class Members. *See* Settlement Agreement ¶ III(D)(7)(f).

8. In addition, each Aggrieved Employee will receive a proportional share of the 25% of the PAGA Penalties ("PAGA Settlement Payment") based on his or her eligible pay periods during the PAGA Period. Specifically, each Aggrieved Employee shall receive their PAGA Settlement Payment proportionate to the number of pay periods worked by the Aggrieved Employee during the PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees during the PAGA Period. *See* Settlement Agreement ¶ III(D)(7)(e).

9. As part of the settlement, Plaintiff will apply for an enhancement payment at the time of seeking final approval in the amount of $5,000 for services to the Class. *See* Settlement Agreement ¶ III(D)(7)(d).

10. Plaintiff's requested enhancement payment is intended to recognize the significant benefits conferred upon the Class and be proportional to the time and effort that Plaintiff expended on behalf of the Class and the Aggrieved Employees, including providing factual information and documents to Class Counsel, discussing the claims and theories at issue in the case with Class Counsel, identifying potential witnesses and reviewing documents, and reviewing the Settlement Agreement, as well as the significant risks Plaintiff undertook by agreeing to serve as named plaintiff.

11. Class Counsel will apply for an attorneys' fees award of thirty-five percent (35%) of the Gross Settlement Amount and reimbursement of litigation costs in an amount up to $15,000. *See* Settlement Agreement ¶ III(D)(7)(b). The attorneys' fees award will be split between the two firms as follows: ⅔ to CounselOne, PC and ⅓ to Gaines & Gaines, APLC. Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel have devoted substantial attorney time to pre-filing investigation; analyzing Plaintiff's claims; conducting legal research and analysis; meeting and conferring over pre-mediation information and data; reviewing policies and procedures regarding Defendant's timekeeping protocol, payment of wages, and provision and tracking of meal and rest breaks, along with examining a sample of actual employee time records, payroll information, and wage statements; interviewing Class Members; retaining a consultant and building a damages model; preparing, briefing, and attending mediation; preparing and submitting notices to the LWDA; negotiating and preparing the Settlement Agreement and Class Notice; preparing and filing the original Complaint, amending the pleadings to incorporate a PAGA representative action, and preparing and filing the FAC; preparing this motion for preliminary approval; and otherwise litigating the case.

12. Class Counsel will also expend future attorney time in attending the hearing on this Motion, overseeing the notice and administration process, drafting the Final Approval Motion and supporting documents, and attending the Final Approval hearing, among other tasks, such as addressing questions from Class Members.

13. Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement amount in light of the substantial risks and significant work undertaken, the excellent results obtained for Class Members, and the efficiency with which the Parties have conducted the litigation. Assuming that the Court grants preliminary approval, Class Counsel will seek an award of attorneys' fees and litigation costs at the time of seeking final approval of the settlement.

14. This settlement is fair, reasonable, and adequate and should be approved pursuant to California law. *See Clark v. American Residential Services, LLC*, 175 Cal. App. 4th 785 (2009)

(hereinafter, "*Clark*") and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) (hereinafter, "*Kullar*"). After discussing these decisions, I will apply the pertinent factors to the present case.

**THE *CLARK* AND *KULLAR* CASES**

15. In *Clark*, the two named plaintiffs filed a class action lawsuit alleging causes of action for unpaid wages, failure to provide meal periods and rest breaks, and other Labor Code violations. *Clark*, 175 Cal. App. 4th at 789. The parties subsequently settled the case. *Id.* Under the settlement each class member submitting a claim would receive approximately $6.43 per work week. *Id.* at 791. The settlement agreement further provided that each class representative would receive $25,000. *Id.* 23 putative class members opted out of the settlement, and 20 putative class members objected. *Id.* at 792-93. The objectors challenged the settlement amount. *Id.* Class counsel defended the settlement amount by explaining that defendant's overtime policy was legally compliant. *Id.* at 795. According to class counsel the overtime claim had absolutely no value. *Id*. at 802. The objectors responded that class counsel had made a "staggering mistake of law" because class counsel had misunderstood how overtime compensation is calculated for commissioned employees. *Id*. at 797. Nonetheless, the court granted final approval.

16. The Court of Appeal reversed the trial court's grant of final approval. *Clark*, 175 Cal. App. 4th at 798. It did so because the trial court "made no independent assessment of the strength of the plaintiffs' case, simply accepting class counsel's assessment of value, including his assertion that the overtime claim . . . [had] 'absolutely no' value." *Id.* at 802. Because the trial court never independently evaluated the legal strength of the overtime claim, it could not have had any way of assessing whether the settlement amount was adequate. *Id.* at 803.

17. In *Kullar*, plaintiff initially filed his lawsuit solely to recover work-related expenses for which defendant had failed to reimburse him and others similarly situated. 168 Cal. App. 4th at 121. Plaintiff propounded written discovery to defendant relating to expense reimbursement. *Id.* at 122. Subsequently, plaintiff got wind that defendant's practices may have violated additional wage-and-hour laws, particularly failure to provide meal periods, with regard to a subclass of employees. *Id.* at 121. Plaintiff did not propound any discovery related to the new claims. *Id*. at 122. Indeed,

"[t]he only documents exchanged relating to the meal period claims appear to be a two-page handwritten record of Kullar's personal meal period breaks and an employee orientation brochure stating company policies and procedures which include the statement, 'Rest breaks and meal periods are scheduled based on business levels, hours worked and applicable state laws.'" *Id*. at 122 n.1.

18. The parties then settled at mediation. *Kullar*, 168 Cal. App. 4th at 122. Neither the parties' stipulation of settlement nor any other materials presented to the court at preliminary approval discussed the materials reviewed, the conclusions drawn from them in assessing damages and negotiating the settlement amount, or the problematic legal positions that had been considered and analyzed. *Id.* at 122 n.2, 126. Putative class members objected to the settlement. The objectors averred that plaintiff "failed to conduct reasonable discovery or pre-settlement investigation to determine facts necessary to ascertain the extent of class loss . . . including facts regarding the extent and rate of Labor Code violations by defendant, the likely or probable range of damages sustained by . . . class members arising from Labor Code violations by defendant, or the existence and nature of records maintained by defendant regarding claimed Labor Code violation." *Id.* at 125 n.7. Further:

> [T]he objectors argued . . . [that] absolutely no discovery was conducted with respect to the claim that class members were not provided meal periods to which they were entitled. No declarations were filed in support of the settlement indicating the nature of the investigation that had been conducted to determine the number of employees that had allegedly been denied meal breaks, the frequency with which the denials had occurred, or the circumstances surrounding those denials, and no analysis was provided of the factual or legal issues that required resolution to determine the extent of any one-hour-pay penalties to which class members may have been entitled. No time records were produced in discovery nor was the court presented any estimated quantification of the number of one-hour-pay penalties that might be due or any explanation of the factors that were considered in discounting the potential recovery for purposes of settlement.

*Id*. at 128-29.

19. The court agreed with the objectors that plaintiff did not make an adequate showing to enable the court to intelligently assess the settlement. "There was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see. The record fails to establish in any meaningful way what investigation counsel conducted or what information they reviewed on which they based their assessment of the strength of the class members' claims, much less does the record contain information sufficient for

the court to intelligently evaluate the adequacy of the settlement." *Kullar*, 168 Cal. App. 4th at 129. The *Kullar* court required that plaintiff provide the trial court with sufficient information about the nature and magnitude of the claims being settled and the impediments to recovery to enable it to make an independent assessment of the reasonableness of the settlement. *Id.* at 133.

20. As the foregoing discussion shows, the *Clark* and *Kullar* courts principally wanted to ensure that trial courts, when deciding whether a class-action settlement is fair, adequate, and reasonable, would independently evaluate the settlement amount in light of the strength of the plaintiff's case, and that plaintiff should provide the court the information necessary to make that evaluation. The *Clark* and *Kullar* courts cite the recognized factors set forth in cases like *Dunk v. Ford Motors Co.*, 48 Cal. App. 4th 1794, 1801 (1996), that trial courts should examine during the approval process, including (1) the extent of discovery completed and the stage of the proceedings; (2) the strength of plaintiff's case in light of the settlement amount; (3) the risk, expense, complexity, and likely duration of further litigation, as well as the risk of maintaining class-action status through trial; (4) the experience and views of counsel; and (5) the reaction of class members to the proposed settlement. *Id.* at 1799.

21. Having discussed the governing law on class action settlements, I will now discuss the above-listed factors.

**THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

22. Prior to initiating the lawsuit, Class Counsel independently and thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews with Plaintiff and other Class Members as well as research into the various legal issues involved in the case. After conducting their initial investigation, Class Counsel determined that the claims were well suited for class action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees.

23. On September 21, 2023, Class Counsel provided pre-filing written notice to LWDA and by certified mail to Defendant of the above-identified allegations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA, and supplemented that pre-filing

notice with an additional submission to the LWDA and Defendant on November 28, 2023. Attached hereto as **Exhibit 2** are true and correct copies of these notices. Concurrently with the filing of Plaintiff's Motion for Preliminary Approval, Counsel will submit copies of the motion and the Settlement Agreement to the LWDA.

24. On November 6, 2023, Plaintiff filed his Class and Representative Action Complaint in San Joaquin County Superior Court. On December 13, 2023, Defendant removed the Action to the United States District Court for the Eastern District of California. On January 19, 2024, Plaintiff filed his First Amended Class and Representative Action Complaint. On March 26, 2025, the Action was remanded back to San Joaquin County Superior Court pursuant to the Parties' stipulation.

25. Plaintiff's lawsuit sought to recover unpaid wages, premiums for improper meal and rest breaks, reimbursement of business expenses, restitution, penalties for improper wage statements, waiting time penalties, civil penalties pursuant to the PAGA, injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs.

26. Defendant denies Plaintiff's allegations of wrongdoing. Defendant does not believe that any liability to Plaintiff or other Class Members exists, or that Plaintiff or Class Members are entitled to any recovery. In settling, Defendant does not admit liability with respect to the alleged claims made by Plaintiff and makes no admission regarding any facts or law related to the lawsuit.

27. Counsel for the Parties agreed to attempt to resolve the matter through mediation after exchanging extensive information and documents, including time and pay records of Class Members and relevant policy documents.

28. On March 7, 2025, the Parties participated in a full-day mediation session with the Hon. Howard R. Broadman (Ret.). During the mediation, the Parties exchanged further information and discussed all aspects of the case, including the risks and delays of litigation and the risk to both Parties for proceeding with a motion for class certification and liability under the claims asserted, along with the potential for PAGA penalties to be asserted. These were contentious issues because of the factual and legal complexity of the case. With the assistance of the mediator, and pursuant to a mediator's proposal, the Parties agreed to resolve the matter and reached the terms of this proposed

arm's-length settlement. The Parties subsequently memorialized these terms in the long-form Settlement Agreement.

29. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believe that the recovery being made available to Class Members is fair, reasonable, and adequate taking into consideration the amounts received in other wage and hour class and representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Members' claim to the settlement award he or she will receive. Class Counsel believe that the settlement serves the best interests of Class Members and Aggrieved Employees.

**THE STRENGTH OF THE CASE IN LIGHT OF THE SETTLEMENT AMOUNT**

30. Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages model for Defendant's liability. Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that there are substantial risks and uncertainty in proceeding with class certification and trial. Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification.

31. For example, Defendant defended against the minimum wage claims by relying on written policies that explicitly prohibited Class Members from engaging in off-the-clock work. Defendant also argued that Class Members worked in different job positions and had different duties, and as a result, Defendant contended there was variation to the circumstances that raises highly individualized questions of fact. Most significantly, Defendant argued that Plaintiff's claims were preempted by Federal Motor Carrier Safety Administration ("FMCSA") regulations. "A State may not enforce a State law or regulation on commercial motor vehicle safety" that the FMCSA has determined is preempted. 49 U.S.C. § 31141(a). Defendant contended that "[t]he FMCSA exercised that authority when it determined, on December 28, 2018, that federal law preempts California's meal and rest break rules as applied to property-carrying commercial motor vehicle drivers covered by the FMCSA's hours of service regulations." *Patton v. Midwest Constr. Services, Inc.*, No. CV 19-8580-JFW(MAAX), 2021 WL 2982277, at *2 (C.D. Cal. June 11, 2021). While the Ninth Circuit concluded that the FMSCA's regulation permissibly preempted California's meal and rest break

rules "as applied to drivers of property-carrying commercial vehicles," subsequent courts have held that "[n]othing in the Ninth Circuit's analysis in *Teamsters* suggests, let alone holds, that the FMSCA *completely preempts* state law with regards to wage and hour rules." *Lindsey v. WC Logistics, Inc.*, 586 F. Supp. 3d 983, 990 (N.D. Cal. 2022) (emphasis in original). The preemption inquiry thus presented a complicated landscape under which both Parties faced uncertainty in moving forward in the case.

**RISK, EXPENSE, COMPLEXITY, AND DURATION OF FURTHER LITIGATION**

32. Absent settlement, the Parties would have needed to conduct substantial additional discovery, such as the production of voluminous records and numerous depositions of experts and percipient witnesses and prepare the case for class certification and trial. The Parties would have had to depose a number of people such as managers, supervisors, human resource representatives, and employees in order to establish liability. Discovery disputes would have no doubt arisen and liability likely would have entailed a battle of experts. This settlement avoids the considerable time, attorneys' fees and costs, and party resources associated with conducting additional discovery, moving for class certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the Court.

**RISK OF MAINTAINING CLASS ACTION STATUS**

33. Here, settlement was reached prior to class certification and the result was a successful outcome for the Class. Yet, class certification was by no means a foregone conclusion. For example, Class Members worked in different job positions and had different supervisors, and as a result, Defendant contended there was variation to the circumstances that could allegedly cause the employees to work off-the-clock and/or be deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this variation in circumstances raised highly individualized questions of fact. Defendant further disputed Plaintiff's characterization of working conditions, liability, and damages, and possessed documentary and testimonial evidence rebutting Plaintiff's allegations. If the Court either denied class certification or later decertified it, the Class would recover nothing and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only.

34. Although Plaintiff was prepared to litigate these claims through class certification and ultimately through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was far from certain that Plaintiff would be able to recover a greater amount at trial, particularly after considering the increased litigation costs that would accrue.

**AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS**

35. Plaintiff estimated the settlement recovery as a reasonable percentage of possible damages recoverable at trial. Based on data received before and during mediation efforts, Plaintiff's damages analysis shows that the settlement reflects just under 23% of the estimated possible damages recoverable at trial. Utilizing a class-wide damages study to assess the nature and magnitude of the claims in question (*see Kullar*, 168 Cal. App. 4th at 123), this case clearly meets the requirement that the class settlement be within the "ballpark" of reasonableness. This settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims.

36. Based on discovery and their investigation, Class Counsel determined Defendant's degree of liability, prepared an exposure analysis, and forecasted the expected recovery for each claim as follows:

Unpaid Wages

37. Plaintiff alleged that he and other employees were subjected to uncompensated time arising from pre- and post- shift duties, along with interrupted meal periods, that were worked off-the-clock due to unreasonable workloads. For example, as a truck driver working for Defendant, Plaintiff alleged that he and Class Members were not paid full wages for all time spent under Defendant's control. This includes time spent after the wheels stopped rolling, including on layovers, at inspections, loading or unloading, completing paperwork, or while awaiting shipments. Plaintiff also alleged that he and Class Members were not compensated for overtime in cases where completing the trip required driving more than eight hours in a single day, as under Defendant's policies, practices, and protocols, Plaintiff and the Class were under Defendant's control for the duration of each load, including pre- and post-trip inspections, but were only paid for each mile driven. As such, Plaintiff argues that these claims are susceptible to "substantial evidence of

systematic company policy to pressure or require employees to work off-the-clock." *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004 (2012).

38. Class Counsel analyzed the documents and data produced by Defendant, and, in conjunction with interviews of Plaintiff and Class Members, determined Defendant's degree of liability and amounts due in damages—specifically, the incidence and amount of purported off-the-clock activity.

39. Notwithstanding the obvious evidentiary challenge of quantifying unrecorded off-the-clock hours, Plaintiff estimates that Defendant is liable for an aggregate of approximately three (3) hours per workweek. At an estimated average hourly rate of $32.61, plus the additional overtime premium of $16.3, such yields an estimated damages amount of $767,182.86.

40. This amount, however, does not discount for risks associated with certification or merits. Most significant, as discussed above in paragraph 31, was the potential for preemption under FMSCA regulations. Defendant also contended that Plaintiff's claim for off-the-clock work is not amenable to class treatment, because employees worked in a variety of job positions with different requirements, and it would require an unmanageable series of mini-trials to determine how much time was spent without pay. Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff's theories regarding how much off-the-clock work occurred in reality and the credibility of those claimed hours given Defendant' express written policies to the contrary. Here, the failure to track all hours poses evidentiary difficulties because it is hotly contested how much off-the-clock work actually occurred. For Plaintiff to establish the quantity of specific disputed and unrecorded work activities—especially over multiple job titles, at differing pay rates—would have been costly, time-consuming, and daunting.

41. Defendant further contended that any off-the-clock time is de minimis. Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018) given that the California Supreme Court refused to allow the de minimis defense to insulate Starbucks from having to pay employees for small amounts of work regularly performed off-the-clock. What is not clear, however, is to what extent the de minimis defense would apply where the uncaptured hours were associated with an occasionally recurring activity. In light of these

considerations—especially the evidentiary difficulties of demonstrating off-the-clock work on a class-wide basis, as well as potential FMSCA preemption—Class Counsel acknowledged that a significant discount on this figure would be appropriate to incorporate the risks of non-certification and being unsuccessful on the merits.

<u>Meal and Rest Period Violations</u>

42. Plaintiff's review of the data of employee driving logs suggests Defendant's non-compliance. Records indicate that meal periods were occasionally "missed," "short," or "late." Consequently, Plaintiff alleged that Defendant violated Cal. Lab. Code §§ 226.7 and 512, as well as the applicable Wage Orders, by failing to compensate Plaintiff and Class Members for short, late, interrupted, and missed meal periods.

43. On February 25, 2021, in *Donohue v. AMN Services,* LLC, 11 Cal. 5th 58 (2021), the California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not permitted to round time records when determining if employees are entitled to meal premium pay, and (2) it is the employer's burden to show that compliant meal periods were provided to employees if the time records show otherwise. Using this opportunity to echo its long stance that California liberally construes the Labor Code and wage orders to favor protection of employees, the California Supreme Court emphasized that meal periods are part of the remedial worker protection framework to protect the health and safety of employees. Pursuant to California Industrial Welfare Commission ("IWC") Wage Order No. 4-2001, § 7(A)(3), an "employer shall keep accurate information with respect to each employee including the following . . . [t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded." Under California law, employers, not employees, have the burden to record and maintain accurate time records. The California Supreme Court in *Donohue* also reiterated that it is the employer's duty to maintain accurate time records for meal periods. *See* 11 Cal. 5th at 81.

44. Defendant, however, contended that it had practices, policies, and procedures to provide meal and rest breaks every workday to their employees that fully complied with the law. Defendant vehemently argued that it complied with the requirements articulated by the California

Supreme Court in *Brinker*, 53 Cal. 4th 1004. Specifically, Defendant maintained that it provided employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieved employees of all duties during meal periods, and relinquished control over employees' activities. Like most employers facing meal period litigation, Defendant argued that employees were apprised of their right to take meal periods, but voluntarily waived them. Defendant also contended that the issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding class certification. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1, 25 (2014) (holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions). Thus, although Plaintiff argues that Defendant had an impermissible top-down practice of requiring Class Members to work during meal breaks, in light of its written policies and other evidence suggesting an intent to follow those policies, establishing the alleged unlawful business practice as a rule rather than exception might prove daunting.

45. Based upon analysis of Class Member time and payroll records and estimating an average of three meal period violations per workweek, Plaintiff calculated the potential maximum exposure of this claim to be approximately $511,455.24, again without taking into account associated risks to proving the claim on a class-wide basis and potential FMSCA preemption as discussed above in paragraph 31.

46. Plaintiff also alleged that he and Class Members did not receive authorized rest breaks as required, whereby employers "relinquish control over how employees spend their time and relieve employees of all duties." *Augustus v. ABM Security Service, Inc.*, 2 Cal. 5th 257, 260 (2016). Since Defendant did not offer Plaintiff and the Class the opportunity to receive compliant off-duty rest periods, Plaintiff contended that "the court may not conclude employees voluntarily chose to skip . . . breaks." *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) ("If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord, *Brinker*, 53 Cal. 4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it."); *see also Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 963 (2005) (reversing summary judgment for employer based,

in part, on evidence that truck drivers "felt pressured" not to take rest breaks, and management knew some drivers were not taking breaks). Thus, Plaintiff alleged that Defendant did not provide premium pay for each non-compliant rest break as required under Cal. Lab. Code § 226.7.

47. Here again, Defendant disputed liability and damages. Defendant maintained that it authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four hours worked as required by Cal. Lab. Code § 226.7. Defendant explained that Class Members had ample opportunity to take, and did take, regular rest breaks. As with meal breaks, Defendant argued that any Class Member who failed to take a rest break, or took a short or late rest period, did so voluntarily and that all applicable rest periods were still authorized and provided. Thus, Defendant argued that it did not act unlawfully to deprive Class Members of rest breaks.

48. Class Counsel recognizes that, unlike meal periods, rest breaks need not be recorded and thus establishing Defendant's exertion of pressure, control, and resulting violations is likely to be more difficult. As such, and based on the narrative of Plaintiff, Class Counsel used half of the exposure for meal breaks, thus yielding a rest break maximum exposure of $255,727.62.

<u>Wage Statement Violations</u>

49. Plaintiff alleged a cause of action under Cal. Lab. Code § 226(a) for Defendant's failure to provide accurate itemized wage statements. Failure to comply with the statute entitles employees to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000). *See* Cal. Lab. Code § 226(e). This cause of action is derivative of the foregoing causes of action because if Defendant did not provide minimum wages for all hours worked, owes premiums for non-compliant meal and rest breaks and unreimbursed business expenses, and so forth, then the wage statements were inevitably inaccurate.

50. Defendant contended, however, that Cal. Lab. Code § 226(e) penalties are not automatic. Rather, the employee must show that Defendant's noncompliance was "knowing and intentional." *Id.* Defendant suggested that any noncompliance was not knowing and intentional.

51. Because the damages for this cause of action are penalties, the statute of limitations is only one year prior to the filing of the original complaint. *See* Cal. Civ. Proc. Code § 340. For settlement purposes, and in consideration of the risks of a loss on the merits of the underlying derivative claim(s) and/or good faith defense,[4] a significant downward departure from any maximum exposure was and is warranted. In reality, many of the pay periods may ultimately have been found to contain no violation at all. The Parties discussed these issues and, based on the $50 initial violation plus the $100 per pay period subsequent violation rates, Plaintiff estimates the total maximum wage statement exposure to be $104,560.

<u>Unreimbursed Expenses</u>

52. Plaintiff asserted a cause of action under Cal. Lab. Code § 2802(a), which requires that an employer reimburse employees for all necessary expenditures that employees incur in discharging their duties. Here, Plaintiff alleges Defendant's failure to reimburse non-exempt employees for necessary business expenses incurred, *i.e.*, Plaintiff and Class Members were required to use their personal cell phones for job-related purposes, but were not reimbursed for such use.

53. Defendant contended that it has a policy and practice of reimbursing employees for necessary business-related expenses. Defendant also contended that, with respect to the alleged expenses for which Plaintiff and other Class Members never requested reimbursement from Defendant, Defendant did not know and had no reason to know that the alleged business-related expenses were incurred. Moreover, to the extent it occurred, Defendant asserted that this claim is not suitable for class treatment as it would require individualized determinations as to whether each employee used a personal cell phone for work-related purposes and, if so, how much of that use was a reasonable percentage of his or her individual monthly phone bill.

[4] *See, e.g.*, *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 93 (2022). In 2023, the Court of Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because penalties for missed meal rest breaks were not clearly established law until the May 2022 California Supreme Court decision. *See Naranjo v. Spectrum Security Services, Inc.*, 88 Cal. App. 5th 937 (2023). On May 6, 2024, the California Supreme Court, on review, clarified that an employer is not liable for statutory penalties for inaccurate wage statements when it had a good faith and reasonable belief that the issued statements were accurate. *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056 (2024).

54. Defendant also argued that the California Labor Code only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. *See* Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554 (2007). Furthermore, whether an expense was necessary would depend in part on the reasonableness of the employee's choice and would thus have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan's Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

55. With recognition that this claim is difficult to certify class-wide and quantify in terms of damages, Plaintiff assigned a de minimis value to this claim.

<u>Waiting Time Violations</u>

56. Plaintiff further asserted a cause of action against Defendant for failure to timely pay all wages due employees at separation. *See* Cal. Lab. Code §§ 201-203. As with other claims, Defendant vigorously disagrees that it engaged in any conduct giving rise to liability or entitlement to recovery of penalties.

57. Defendant argued that waiting time penalties are not appropriate because it attempted to pay employees all final wages owed in good faith upon employees' separation, thereby precluding a finding of willfulness necessary to obtain waiting time penalties.

58. After the Parties discussed the above risks and the uncertainty of proving the underlying claims (of which waiting-time penalties are derivative), Class Counsel estimated $89,220.96 to be the maximum realistic exposure value for this claim.

<u>PAGA Penalties</u>

59. The Parties exchanged sufficient data and information such that the potential liability and exposure to PAGA penalties could be analyzed. The success of Plaintiff's PAGA claim is wholly dependent upon the success of the underlying claims occurring within the one-year statute of limitations applicable to the PAGA. Defendant contended that these penalties are derived from the underlying wage and hour violations, which Defendant disputed.

60. Defendant maintained and continues to maintain that it had legally compliant employment policies and practices throughout the statutory period. Defendant denied and continues to deny that it ever violated any provision of the California Labor Code, and argued that, even assuming such violations occurred, Defendant will not be treated as having engaged in subsequent violations giving rise to heightened penalties. In other words, Defendant argued that heightened civil penalties for subsequent violations would not be assessed unless it could be shown that Defendant had notice that it was violating the law—*e.g.*, it had been cited by a labor agency or adjudged by a court to have done so. *See, e.g.*, *Amaral v. Cintas Corp.*, 163 Cal. 4th 1157, 1209 (2008). Thus, Defendant contended that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with initial violations would apply.

61. Under Cal. Lab. Code § 2699(f)(2), as in force at the time of this case's filing, Defendant is subject to a civil penalty of $100 for the initial violation of the underlying Labor Code violations, and $200 for each subsequent pay period where the violation occurred.[5] Although, strictly speaking, class certification requirements are not required to be satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and valuation of a PAGA claim is uncertain.[6] Thus, Class Counsel applied discounts for the risks in manageably trying the PAGA

[5] PAGA was recently amended to modify, and in many instances, significantly reduce, the penalties available to aggrieved employees, making the proposed settlement even more substantial. However, these amendments are not retroactive; they apply only to LWDA letters and PAGA civil actions filed on or after June 19, 2024. *See* Cal. Lab. Code § 2699(v). The analysis in this Motion therefore applies the pre-amendment standards for PAGA penalty and settlement analysis.

[6] Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the state but rather to facilitate the enforcement of the labor laws. *See*, *e.g.*, *Williams v. Superior Court*, 3 Cal. 5th 531, 546 (2017); *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009); Cal. Lab. Code § 2699(i). In assessing the adequacy of the recovery under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved employees are to receive formally in the form of monetary civil penalties but instead whether the total settlement amount achieves the PAGA's objectives. When PAGA claims are settled, courts "consider whether the proposed PAGA settlement is fair and adequate in view of the purposes and policies of the statute[]," and those "purposes and policies" include "benefit[ting] the public by augmenting the state's enforcement capabilities, encouraging compliance with California Labor Code provisions, and deterring noncompliance." *O'Connor v. Uber Techs., Inc*., 201 F. Supp. 3d 1110, 1132-33, 1134 (N.D. Cal. 2016). A "[c]ourt does not review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent class members." *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, LWDA's Comments on Proposed PAGA Settlement, ECF No. 736 at 4:17-19 (N.D. Cal. July 29, 2016). "PAGA penalties must be evaluated in terms of their public policy objective and not just through the prism of what private relief has been sought or obtained." *Id.* at 4:14-16.

claims, possible bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing liability, and the risks with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court. *Id.* In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), for example, a court imposed PAGA penalties of just $5 per instance of proven wage-and-hour violations following its determination of liability, noting that the "violations were minimal and [the employer] attempted full compliance with California's meal period requirements." In *Fleming v. Covidien, Inc.*, No. EDCV10-01487-RGK-OP, 2011 U.S. Dist. LEXIS 154590, at *9 (C.D. Cal. Aug. 12, 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of over 80%, because the court found maximum penalties "unjust," finding the employees had suffered no injuries. Some trial courts have actually awarded ***no*** civil penalties, even when Labor Code violations were established. *See Makabi v. Gedalia*, No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at *5-7 (Mar. 2, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court); *In re Taco Bell Wage & Hour Actions*, No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *40-43 (E.D. Cal. Apr. 8, 2016) (PAGA penalties denied after trial). In *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 941 (N.D. Cal. 2017), the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, its efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. This is a very significant risk factor. Defendant also disputed that Plaintiff could find a coherent method for proving liability for various employees working in different departments and/or job positions.

62. Moreover, the LWDA has released data on PAGA settlement amounts, showing that the settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by California state courts. These settlements often range between $7,500 and $15,000 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g.*, *Penaloza v. PPG Industries Inc.*, No. BC471369, 2013 WL 2917624, at *2 (Super. Ct. L.A. County May 20, 2013) (approving PAGA penalties of $5,000.00 to class of

667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County March 12, 2013) (approving PAGA penalties of $10,000.00 for class of approximately 3,000 members).

63. Establishing violations for purposes of the PAGA would be difficult in this matter. After analyzing the claims, Class Counsel concluded that the value of this settlement is fair, adequate, and reasonable. Here, given the challenges and risks in attempting to prove wide-scale liability as well as the likelihood that any penalties imposed would be significantly discounted, Class Counsel calculated a realistic estimate of $40,000 in potential PAGA penalty exposure—of which, by statute, only 25%, or $10,000, would be recoverable by aggrieved employees.

**Summary**

64. Using the estimated figures for each of the claims described above, Class Counsel predicted that approximately $1,768,146.68 would be the maximum possible damages available to Class Members. The Gross Settlement Amount of $405,000 thus represents almost 23% of the maximum realistic exposure to Defendant, while avoiding the further expense and serious risk of proceeding toward class certification and trial. "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted); *see also, e.g.*, *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."). Taking into account the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce the civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate.

**EXPERIENCE AND VIEWS OF COUNSEL**

65. CounselOne and its attorneys have represented millions of consumers and employees in numerous consumer and employment class actions throughout the nation. A substantial percentage of CounselOne's practice is devoted to class action litigation, particularly in the areas of

consumer protection, consumer privacy, employment, and false advertising. CounselOne was certified as class counsel in a consumer-privacy action against Apple involving almost one million Californians. *See Deveroux v. Apple, Inc.*, Santa Clara Super. Ct. Case No. 1-14-CV-271773 (May 26, 2018).

66. CounselOne and its attorneys are well qualified because of our experience, knowledge, and resources to act as counsel and represent the putative class in this action. CounselOne has a substantial percentage of our practice devoted to litigating wage-and-hour and working conditions violations, and the bulk of these cases are class actions.

67. CounselOne and its attorneys have obtained favorable settlements against a range of defendants, including many Fortune 1000 companies. There follows a list of some of CounselOne's class action cases that have received final approval:

a. *Hoffman v. Bank of America*, CASD Case No. 3:12-cv-539 JAH (DHB);

b. *Byanooni v. Merrill Lynch Pierce Fenner & Smith*, CAND Case No. 3:12-cv-05270-RS;

c. *Zadeh v. Ikon*, LASC Case No. BC470371;

d. *Lewert v. Vendini, Inc.*, Santa Clara County Super. Ct. Case No. 1-14-CV-259897;

e. *Knell v. FIA Card Services, Inc.*, CASD Case No. 3:12-cv-00426-AJB-WVG;

f. *Klacko v. Diamond Foods, Inc.*, U.S. District Court, S.D. Fla. Case No. 9:14-cv-80005-BB;

g. *Romero v. Loacker*, Santa Clara County Super. Ct. Case No. 1-14-CV-274434;

h. *Fast v. Hilton Hotel Corporation*, LASC Case No. BC409467;

i. *Sink-Crilly v. Centex Homes*, CACD Case No. CV09-2476;

j. *Alexander v. DS Waters of America*, CACD Case No. CV09-03384;

k. *Collins v. Live Nation Worldwide, Inc.*, LASC Case No. BC436141;

l. *Milford v. ADT Security Services, Inc.*, CACD Case No. CV08-2236;

m. *Beal v. Activision, Inc.*, LASC Case No. BC348560;

n. *Vasquez v. The Hollywood Pig n Whistle LP*, LASC Case No. BC335075;

o. *Flores v. Loomis Armored*, LASC Case No. BC409899;

p. *Galavis v. Patina Restaurant Group, LLC*, LASC Case No. BC375225;

q. *Dupont v. Innovative Dining Group*, LASC Case No. BC391240;

r. *Fluke v. RFG Oil, Inc.*, LASC Case No. BC403354;

s. *Morris v. Gymboree, Inc.*, LASC Case No. BC393270;

t. *Smith v. Rio Rancho Pontiac GMC Buick Inc*., LASC Case No. BC391187;

u. *Healy v. Siemens IT Solutions and Services, Inc.*, Santa Clara County Super. Ct. Case No. 108CV113479;

v. *Urena v. Camachos Restaurant*, LASC Case No. BC365913;

w. *Callela v. Dolce Group*, LASC Case No. BC364711;

x. *Gonzalez v. Calstar Motors, Inc*., LASC Case No. BC479756;

y. *Garcia v. California Credits Group*, LASC Case No. BC353213;

z. *Rylko v. The Griddle Café, Inc.*, LASC Case No. BC386126;

aa. *White v. RBD Staffing, Inc., Sprint Communications Company*, CACD Case No. 2:15-cv-08519-GHK-KS;

bb. *In Re Walgreen Co. Wage and Hour Litigation*, CACD Case No. 2:11-cv-07664-PSG-FFM;

cc. *Afanasyev v. Miller Infiniti, Inc.*, LASC Case No. BC350788;

dd. *Ortega v. AJC Sandblasting, Inc.*, LASC Case No. BC378806;

ee. *Goldman v. Aorta Restaurant Operating LP*, LASC Case No. BC379688;

ff. *Fikara v. Niemann Foods Inc.*, U.S. District Court, C.D. Ill. Case No. 3:16-cv-03285-TSH;

gg. *Carreon v. Wolfgang Puck Catering and Events, LLC*, LASC Case No. BC398569;

hh. *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.*, LASC Case No. BC398459;

*ii.* *Bradley v. Mercedes-Benz*, LASC Case No. BC499494;

jj. *Davies v. Godiva Chocolatier, Inc.*, LASC Case No. BC429547;

kk. *Edery v. Citibank*, San Francisco County Super. Ct. Case No. CGC-14-538436; and

ll. *Huebner v. ManTech International Corporation*, CACD Case No. 2:15-cv-09889-PA-SS.

68. The attorneys at CounselOne have litigated and successfully settled a number of wage-and-hour class actions. This background is helpful in assessing the reasonableness of settlements such as the one at issue here, and from this experience the attorneys at CounselOne have concluded that this action could not have been settled on better terms than provided under the present settlement agreement. The experience of the attorneys at Gaines & Gaines, APLC is outlined in the Declaration of Daniel F. Gaines, filed concurrently herewith.

69. In sum, the attorneys at CounselOne are experienced in employment class and representative actions and are adequate to represent the settlement class as Class Counsel along with Gaines & Gaines, APLC.

**CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

70. The proposed class satisfies the criteria for certification under California law, as embodied in Cal. Civ. Proc. Code § 382. Defendant has agreed to the certification of the class for settlement purposes. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk*, 48 Cal. App. 4th at 1807 n.19. Indeed, a "lesser standard" of scrutiny applies in certifying classes for settlement purposes. *Id.* Therefore, the Court should take into consideration the fact that the Parties have settled their claims and stipulated to certification for settlement purposes when making its assessment.

71. **Numerosity and Ascertainability**. Here, the class definition is "precise, objective and presently ascertainable." *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Class Members are comprised of all current and former non-exempt employees employed by Defendant in California during the Class Period. Settlement Agreement ¶ I(C). Defendant is required to and does maintain employment records of such persons, including contact information and social security numbers. Documents and information exchanged reflect a class of approximately 57 non-exempt employees during the relevant period. As a result, the proposed Class satisfies the ascertainability and numerosity requirements. *See, e.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981), stating that "[n]o set number is required as a matter of law for the maintenance of a class action," and citing examples where classes as little as 10 (*Bowles v. Superior Court*, 44 Cal.

2d 574 (1955)), and 28 (*Hebbard v*. Colgrove, 28 Cal. App. 3d 1017 (1972)) were upheld; *see also Collins v. Rocha*, 7 Cal. 3d 232 (1972) (finding a class of 44 farm workers sufficiently numerous).

72. **Commonality**. This litigation is predicated on uniform company policies and systemic top-down business practices revolving principally around Defendant's timekeeping and pay practices—*e.g.*, off-the-clock work attributed to common job duties, unreasonable work schedule demands, and failure to pay meal and rest break premiums despite records depicting non-compliance and practices resulting in interruption, etc.—as well as derivative inaccurate wage statements and pay owed upon separation. These allegations have given rise to the following claims: failure to pay minimum wages; meal period liability; rest break liability; failure to pay all final wages at termination of employment; failure to maintain and provide accurate itemized wage statements; failure to reimburse necessary business expenses; and derivative UCL and PAGA claims arising therefrom.

73. Because Plaintiff has alleged a single top-down compensation scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation*, 172 F.R.D. 119, 123 (S.D.N.Y. 1997) (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, 169 F.R.D. 493, 518 (S.D.N.Y. 1997)). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen v. Owens-Illinois*, 191 Cal. App. 3d 1341, 1350 (1987) (granting class certification in a manufacturing defect case when a common course of action had been proven). This inference "eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her." *Id.* at 1351. Thus, the outcome of this matter depends upon questions that are common to members of the Class. These types of claims are commonly held to be proper for class certification. *See, e.g.*, *Bluford v. Safeway, Inc.*, 216 Cal. App. 4th 864, 871 (2013) (reversing denial of rest period claim); *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 726 (2013) (certifying meal period claim).

74. **Typicality**. Here, Plaintiff's claims are typical of those held by the members of the Class. Like all other Class Members, Plaintiff was a non-exempt employee working for Defendant

in California during the Class Period. Like other Class Members, Plaintiff alleges he was not paid for all hours worked, due to being required to perform work off the clock (*i.e.*, pre-/post-shift duties and interrupted meals) and Defendant's policy of paying only for the duration of each mile driven as opposed to all time spent under Defendant's control; did not receive timely and duty-free meal and rest breaks and was not paid premiums for non-compliant breaks; did not receive accurate itemized wage statements; was not paid all wages and premiums owed upon termination; and incurred necessary business expenses without reimbursement. Plaintiff was therefore impacted by the same challenged policies and practices that allegedly injured the Class as a whole and subject to the same defenses raised by Defendant as to the Class, and his claims therefore are typical.

75. **Adequacy**. Here, Plaintiff will adequately represent the Class as there are no conflicts between the named Plaintiff and the Class he seeks to represent. *McGhee v. Bank of America*, 60 Cal. App. 3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour litigation and are adequate to represent Plaintiff and the Class.

76. **Superiority**. By consolidating many individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the efficiency interests of the litigants and the judicial system. Absent class treatment, the only alternative would be to force these employees to file individual actions. *Sav-On Drug Stores v. Superior Court*, 34 Cal. 4th 319, 339 n.10 (2004) (stating "[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions—*not* between the complexity of a class suit that must accommodate some individualized inquires and the absence of any remedial proceeding whatsoever."). Finally, in the context of settlement, the superiority concerns are essentially non-existent.

**PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO CLASS MEMBERS**

77. This Court should order distribution of the proposed Notice of Pendency of Class and Representative Action Settlement ("Class Notice"), attached as **Exhibit A** to the Settlement

Agreement (attached hereto as Exhibit 1), to the Class by first class U.S. mail, postage prepaid, using the last known mailing address information provided by Defendant.

78. Here, the Parties propose that the settlement be administered by CPT, an experienced class action settlement administrator. Settlement Agreement ¶ I(DD). Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to the Settlement Administrator within ten (10) business days after preliminary approval of the settlement. *Id.* at ¶ III(D). The Settlement Administrator will run all addresses through the National Change of Address database and, to the extent that any notices are returned, will conduct further skip traces to obtain current address information. *Id.*

79. The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the Parties, the key terms of the settlement, the uniform 45-day deadline to submit a workweek dispute, request for exclusion/opt-out, or object to the settlement and the procedure by which to do so, and explains the recovery formula and credited number of workweeks and pay periods for each Class Member/Aggrieved Employee.

80. The proposed notice will also notify Class Members of the final approval hearing date, provide the contact information for Class Counsel, and advise Class Members that they may enter an appearance through counsel if they wish. This manner of giving notice satisfies California Rules of Court, Rule 3.766(e) as the best notice practicable under the circumstances. Thus, the proposed method of notice is reasonably calculated to reach Class Members by the best means practicable and should be approved.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of October, 2025, at Beverly Hills, California.

Anthony J. Orshansky

Exhibit 1

`

# STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

It is stipulated and agreed by and between Plaintiff Stephen Prince ("Plaintiff") and Defendant Cheema Freightlines LLC ("Defendant") (collectively, Plaintiff and Defendant are referred to as the "Parties"), subject to the approval of the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or as defined elsewhere in this Stipulation of Class Action and PAGA Settlement ("Settlement").

This Settlement is made by and between the Parties following a mediation session on March 7, 2025 with the Hon. Howard R. Broadman (Ret.).

The Parties agree that the Action shall be, and is, ended, settled, resolved, and concluded by agreement of Defendant to pay the settlement amount of Four Hundred and Five Thousand Dollars and Zero Cents ($405,000), as provided in Section III(D)(7)(a) below ("Gross Settlement Amount") pursuant to the terms and conditions of this Settlement and for the consideration set forth herein, including but not limited to, a release of claims by the Class Members as set forth herein.

## I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Settlement shall have the meanings ascribed to them as set forth below:

A. "Action" means the action filed on November 6, 2023 in San Joaquin County Superior Court, styled *Prince v. Cheema Freightlines LLC*, bearing Case No. STK-CV-UOE-2023-11625, and removed to the U.S. District Court for the Eastern District of California under case number 2:23-cv-2907-DJC-AC, in which a First Amended Complaint was filed on January 19, 2024.

B. "Aggrieved Employees" means all persons currently or formerly employed as non-exempt employees in California by Defendant at any time during the PAGA Period (defined below).

C. "Class" means all persons currently or formerly employed as non-exempt employees in California by Defendant at any time during the Class Period (defined below).

/ / /

/ / /

/ / /

D. "Class Counsel" means the attorneys for the Class and the Class Members, as follows:

Anthony J. Orshansky
anthony@counselonegroup.com
P. Bartholomew Quintans
bart@counselonegroup.com
**COUNSELONE, PC**
9465 Wilshire Blvd., Suite 300
Beverly Hills, CA 90212
Telephone: (310) 277-9945
Facsimile: (424) 277-3727

Daniel F. Gaines
daniel@gaineslawfirm.com
**GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

E. "Class Member(s)" means all members of the Class.

F. "Class Notice" means the Notice of Proposed Class and Representative Action Settlement in a form substantially similar to the notice attached hereto as **Exhibit A**, subject to Court approval.

G. "Class Period" means September 26, 2018 through the Preliminary Approval Date of the Settlement or an earlier date at Defendant's discretion per Section III(D)(5).

H. "Court" means the Superior Court of California, County of San Joaquin.

I. "Effective Date" means the later of the following: (1) if no objections are filed to the Settlement, then the sixtieth ($60^{th}$) day after the date the Final Approval Order is signed as long as this date is on or after September 12, 2025 which, if it is not, then the Effective Date shall be September 12, 2025 after the Final Order is signed; (2) if objections are filed and overruled, and no appeal is taken of the Final Approval Order, then the sixtieth ($60^{th}$) day after the date the Final Approval Order is signed as long as this date is on or after September 12, 2025 which, if it is not, then the Effective Date shall be September 12, 2025 after the Final Order is signed; or (3) if an appeal is taken from the Court's overruling of objections to the Settlement, ten (10) business days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final as long as that date is on or after September 12, 2025, which if it is not, then the Effective Date shall be September 12, 2025 after an appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

J. “Defendant” means Cheema Freightlines LLC.

K. “Defense Counsel” means counsel for Defendant:


**HBG LAW, P.C.**
Harry B. Gill, Esq.
harry.gill@hbglaw.com
65 Enterprise, 4th Floor
Aliso Viejo, CA 92656
Telephone: (949) 867-2100
Facsimile: (949) 867-2114


L. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

M. “Enhancement Award” means an amount of up to Five Thousand Dollars and Zero Cents ($5,000) for Plaintiff Stephen Prince, subject to Court approval.

N. “Final Approval Order” means the final formal court order signed by the Court and entering a judgment approving this Settlement on substantially the terms provided herein or as the same may be modified by subsequent written agreement of the Parties as approved by the Court following the Final Approval Hearing in accordance with the terms herein.

O. “Gross Settlement Amount” means Four Hundred and Five Thousand Dollars and Zero Cents ($405,000), unless increased on a pro rata basis pursuant to Section III(D)(5) to be paid by Defendant, at its discretion based on the pro rata factors, and pursuant to the terms of this Settlement to settle the Action. All claims of the Settlement Class, including all wages, damages, interest, penalties, and all administration costs, attorney’s fees and costs, Enhancement Award, and LWDA Payment (defined below) pursuant to Section III(D)(7) below, shall be paid out of the Gross Settlement Amount. The employer’s share of payroll taxes arising from the payments made under this settlement shall be paid by Defendant separate from and in addition to the Gross Settlement Amount. No part of the Gross Settlement amount shall revert to Defendant.

P. “Individual Settlement Payment” means the amount of money from the Net Settlement Amount that shall be paid to each Participating Class Member, less the employee’s portion of required federal and state taxes, contributions and withholdings with respect to the wage portion of the Individual Settlement Payment. Individual Settlement Payments will be each Participating Class Member's proportional share of the Net Settlement Amount (which shall be determined by the calculations provided in this Settlement).

Q. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Approval Order.

R. "PAGA Payment" means $40,000 of the GSA which is dedicated to settlement of the PAGA claims; $30,000 of which shall be paid to the Labor and Workforce Development Agency ("LWDA Payment") pursuant to Section III(D)(7)(e) of this Settlement, subject to Court approval, and $10,000 of which shall be part of the Net Settlement Amount to be distributed to Aggrieved Employees.

S. "Net Settlement Amount" means the Gross Settlement Amount less the Court-approved settlement administration costs, attorney's fees and costs, Enhancement Award, and LWDA Payment, pursuant to Section III(D)(7) below.

T. "Non-Participating Class Member(s)" means those Class Members who submit to the Settlement Administrator a valid and timely request to be excluded from the Class pursuant to Section III(D)(2) below.

U. "Objection" means a signed written objection to the Settlement by a Class Member, timely mailed to the Settlement Administrator, setting forth the grounds for the objection, along with any supporting documents, the Class Member's address, telephone number, reference to the Action, and whether they intend to appear at the Final Approval Hearing.

V. "PAGA Period" means September 21, 2022 through the Preliminary Approval Date of the Settlement or an earlier date at Defendant's discretion per Section III(D)(5).

W. "Participating Class Member(s)" is defined as a Class Member who does not timely exclude himself/herself/themself from the Settlement and will therefore receive his/her/their share of the Settlement proceeds automatically without the need to return a claim form. Each Participating Class Member will be paid his/her/their Individual Settlement Payment.

X. "Plaintiff" means Stephen Prince.

Y. "Preliminary Approval Date" means the date the Court preliminarily approves the Settlement.

Z. "Qualifying Pay Periods" means any pay period during which an Aggrieved Employee performed work for Defendant during the PAGA Period.

AA. "Qualifying Workweeks" means any week during which a Class Member performed work for Defendant during the Class Period.

BB. "Settlement" means this Stipulation of Class Action Settlement, including the attached Exhibit.

CC. "Settlement Administration Costs" means an amount of up to Seven Thousand Five Hundred Five Dollars and Zero Cents ($7,500), subject to Court approval, for all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, mailing of notice to the class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks and related tax reporting forms, administration of unclaimed and/or uncashed checks to the California State Controller's Office's Unclaimed Property Division, and distribution of checks to Class Counsel for attorneys' fees and costs, to Plaintiff for his Enhancement Award, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement Amount.

DD. "Settlement Administrator" means CPT Group, Inc., which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Settlement.

## II. CONTINGENT NATURE OF THE AGREEMENT

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Settlement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Settlement on a conditional basis. This Settlement is contingent upon the entry of the Final Approval Order. Should the Court decline to approve all material aspects of the Settlement or make rulings substantially altering the Settlement's material terms, except for the awards of the Class Counsel attorney's fees payment and Class Counsel litigation expenses payment or the Enhancement Award, Defendant will have no obligation to make any payment, including any portion of the Gross Settlement Amount. If the Effective Date does not occur, the fact that the Parties were willing to stipulate for the purposes of this Settlement shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Action, and this Settlement shall not be referred to or used for any purpose whatsoever. Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Effective Date does not occur, or if disposition of this Action is not effectuated, any certification of the Class as to Defendant will be vacated and Plaintiff, Defendant, and the Class will be returned to their respective positions in the Action as if the Settlement had not been executed. In the event that the Effective Date does not occur: (a) any Court orders preliminarily or finally approving certification of any class contemplated by this Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Settlement, the fact that Defendant did not oppose the certification of a Class under this Settlement, or that the Court preliminarily approved the certification of the Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. If the Effective Date does not occur, this Settlement shall be deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class certification in the Action for any purpose if the Effective Date does not occur. Further, Defendant denies all of Plaintiff's claims as to liability and damages as well as Plaintiff's class and PAGA allegations. Defendant expressly reserves all rights to challenge any and all such claims and allegations upon all procedural and factual grounds, including the assertion of all defenses, if the Effective Date does not occur.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Settlement and shall otherwise use their respective best efforts to obtain Court approval and implement this Settlement. If the Court does not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and confer in good faith to address the Court's concerns. If the Parties are unable to agree upon a resolution, the Parties agree to seek guidance from the Court to resolve the dispute.

## III. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT

The procedure for obtaining Court approval of and implementing this Settlement shall be as follows:

### A. Stipulation to Remand to State Court

The Parties will stipulate and request remand of the Action back to San Joaquin County Superior Court prior to seeking settlement approval.

### B. Motion for Conditional Class Certification and Preliminary Approval

Plaintiff will bring a motion before the Court for an order conditionally certifying the Class to include all claims pled in the Action based on the preliminary approval of this Settlement. The date that the Court grants preliminary approval of this Agreement will be the "Preliminary Approval Date." Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall submit to the LWDA a copy of this Agreement and all supporting approval documents required by the LWDA at the same time that Plaintiff submits them to the Court for approval.

### C. The Settlement Administrator

The Parties have chosen CPT Group, Inc. to administer this Settlement and to act as the Settlement Administrator, including but not limited to distributing and responding to inquiries about the Class Notice, determining the validity of exclusions/opt-outs, calculating the Net Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment checks and distributing them to Participating Class Members, administering and making payment of unclaimed and/or uncashed checks to the California State Controller's Office's Unclaimed Property Division, issuing the payment to Class Counsel for attorneys' fees and costs, the Enhancement Award check to Plaintiff, the LWDA Payment, and calculating and issuing the employer payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree to all of the terms and conditions of this Settlement.

All costs of administering the Settlement, including but not limited to all costs and fees associated with preparing, issuing and mailing any and all notices to Class Members and/or Participating Class Members, all costs and fees associated with computing, processing, reviewing, and mailing the Individual Settlement Payments, all costs and fees administering and making payment of unclaimed and/or uncashed checks to the California State Controller's Office's Unclaimed Property Division, all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency, all costs and fees associated with preparing any other checks, notices, reports, or filings to be prepared in the course of administering disbursements from the Net Settlement Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Settlement ("Settlement Administration Costs"), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

**D. <u>Notice to Class Members</u>**

No later than ten (10) business days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with a "Class List" based on its business records, identifying the names of the Class Members, their last known home addresses, Social Security numbers or, as applicable, other taxpayer identification number, their dates of employment during the Class Period, and any dates where the Class Member was on a leave of absence, on inactive status, or otherwise no work was performed. This information shall be treated as confidential and shall not be disclosed to Plaintiff, Class Counsel or any other person without prior approval from Defendant's Counsel.

Within ten (10) business days of receiving the Class List from Defendant, the Settlement Administrator will send Class Members, by first-class mail, at their last known address, the Court approved Class Notice, including notice of this settlement and of the opportunity to opt out of the Class or object to the Settlement. Class Members will have forty-five (45) calendar days from the date of mailing in which to postmark Requests for Exclusion (defined below) or Objections. Prior to the initial mailing, the Settlement Administrator will check all Class Member addresses against the National Change of Address database and shall update any addresses before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered mail within five (5) business days of receiving notice that a notice was undeliverable. If a Class Member's notice is re-mailed, the Class Member shall have fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion or Objection. Class Members shall not be required to submit claim forms in order to receive their Individual Settlement Payments.

If the Class Notice is returned with a forwarding address, the Settlement Administrator shall re-mail the Class Notice to the forwarding address. With respect to those Class Members whose Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace based on set criteria and, if another address is identified, shall mail the Class Notice to the newly identified address. It is the intent of the parties that reasonable means be used to locate Class Members and that the Settlement Administrator be given discretion to take steps in order to facilitate notice of this Settlement and delivery of the Individual Settlement Payments to the Participating Class Members. If no address can be determined by the Settlement Administrator after these efforts, no further efforts to determine an address shall be required.

If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly status report provided to the Parties.

In the event a Class Member's Class Notice remains undeliverable sixty (60) calendar days after the Class Notice was initially mailed, the Settlement Administrator will not mail the Class Member's Individual Settlement Payment. The Settlement Administrator will hold the Class Member's Individual Settlement Payment during the check cashing period on behalf of the Class Member. If at the conclusion of the check cashing period the Class Member's Class Notice and Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in Section III(D)(7)(f) below.

No later than twenty (20) business days prior to the Final Approval Hearing, the Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration attesting to completion of the notice process, including any attempts to obtain valid mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid Requests for Exclusion and Objections that the Settlement Administrator received.

Compliance with the procedures described in this section shall constitute due and sufficient notice to Class Members of this proposed Settlement and the Final Approval Hearing and shall satisfy the requirements of due process. Nothing else shall be required of the Parties, Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice of the proposed Settlement and the Final Approval Hearing. However, if any Class Member objects to the Settlement and the Final Approval Hearing is continued as a result, the Settlement Administrator shall provide notice to the objecting party of the continuance.

**D. <u>Responses to Notice</u>**

**1. Class Member Disputes**

If any Class Member disagrees with Defendant's records as to his, her, or their Qualifying Workweeks during the Class Period as reflected in the Class Notice, the Class Member shall set forth the Qualifying Workweeks he or she claims to have worked during the Class Period and submit to the Settlement Administrator along with any supporting documentation. The Notice will also provide a method for the Class Member to challenge the employment data on which his or her Individual Settlement Payment is based. The Settlement Administrator shall contact Class Counsel and Defense Counsel regarding the dispute, who shall work cooperatively in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks based on the information provided to it. Any dispute not otherwise resolved by the Administrator and the Parties shall be resolved by the Court.

**2. Requests for Exclusion from the Class**

The Plaintiff agrees not to request exclusion from the Class. In order for any Class Member to validly exclude himself/herself/themself from the Class and this Settlement (*i.e.,* to validly opt out), the Class Member or his/her/their authorized representative must notify the Settlement Administrator via mail, postmarked by no later than forty-five (45) calendar days after the date the Settlement Administrator initially mails the Class Notice to the Class Members (or fifteen (15) calendar days after the Settlement Administrator re-mails the Class Notice to the Class Member, whichever is later). A Request for Exclusion shall: (1) be signed by the Class Member; (2) contain the case name and case number of the Action; (3) contain the Class Member's full name, telephone number, and mailing address; and (4) clearly state that the Class Member wants to opt out of the settlement. No specific language is required in the Request for Exclusion provided it is sufficiently clear that the Class Member desires to be excluded from the class settlement. The Class Notice shall contain instructions that the Request for Exclusion must be mailed, the date by which it must be mailed, and state the name and address of the Settlement Administrator. The date of the initial mailing of the Class Notice, and the date the signed Request for Exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment arising from the Class claims, will not be bound by the terms and conditions of this Settlement as to the Class claims, and will not have any right to object, appeal, or comment thereon. However, the proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of the PAGA claim alleged in the Action. Thus, if the Court approves the Settlement, then even if a Class Member requests exclusion from the Settlement, the Class Member will still receive an individual settlement share for the PAGA claims pursuant to the terms in Section III(D)(7)(e) below, and will be deemed to have released the PAGA claims. A Request for Exclusion will preserve the Class Member's right to individually pursue only the remaining Class claims.

Any Class Member who fails to timely submit a valid Request for Exclusion shall automatically be deemed a Participating Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Approval Order, and by the other rulings in the Action.

**3. Objections to Settlement**

The Plaintiff agrees not to object to the Settlement. For any Class Member to object to this Settlement, or any term of it, the person making the objection must not submit a Request for Exclusion (*i.e.*, must not opt out), and must prepare, sign and send the Objection using the instructions provided in the Class Notice to the Settlement Administrator, postmarked no later than forty-five (45) calendar days after the Class Notice was initially mailed to the Class Members (or fifteen (15) calendar days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), along with all supporting papers. The date of the initial mailing of the Class Notice, and the date the signed Objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any Objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

**4. Communication with Class Members**

The Parties to this Settlement and Class Counsel and Defense Counsel shall not, directly or indirectly, through any means, encourage or solicit any Class Member to exclude himself or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

**5. Defendant's Right to Adjust Gross Settlement Amount**

When the Parties agreed to settle this matter, Defendant estimated the number of workweeks worked by putative Class Members in the Class Period as 5,228. If the number of workweeks worked by putative Class Members in the Class Period increases by more than 10% as of the Court's preliminary approval of this Settlement Agreement, Defendant will have the option to either (a) cut off the Class Period and the PAGA Period at the 5,228 workweek mark or (b) increase the Gross Settlement Amount by a pro rata percentage for each additional workweek. Defendant shall have the option to exercise this choice in its sole and absolute discretion.

**6. Final Approval Hearing**

On the date set forth in the Order for Preliminary Approval and Class Notice, a Final Approval Hearing shall be held before the Court in order to (1) review this Settlement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement and shall submit to the Court a Proposed Final Approval Order.

a. <u>Waiver of Right to Appeal</u>

Provided that the Final Approval Order is consistent with the terms and conditions of this Settlement, all Class Members who do not submit timely written objections to the Settlement or orally object at the Final Approval Hearing hereby waive any and all rights to appeal from the Final Approval

Order and Judgment, including all rights to any post-Final Approval Order proceeding and appellate proceeding, such as a motion to vacate or set-aside the Final Approval Order and Judgment, a motion for new trial, and any extraordinary writ, and the Final Approval Order and Judgment therefore shall become final and non-appealable at the time it is entered. This waiver does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-Final Order proceedings. A modification by the Court of the requested amount of the Enhancement or Class Counsel's fees or costs shall not constitute a basis for appeal of the Final Approval Order within the meaning of this paragraph.

b. <u>Vacation, Reversal, or Material Modification of Final Order and Judgment on Appeal or Review</u>

If, after a notice of appeal or a petition for a writ of *certiorari* or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Approval Order such that there is a material modification to the Settlement (other than a modification by the Court of the requested amount of the Enhancement or Class Counsel's fees or costs) and that court's decision is not completely reversed, and the Final Approval Order is not fully affirmed on review by a higher court, then Plaintiff and Defendant shall each have the right, but not the obligation, to void the Settlement, which the Party must do by giving written notice to the other Party, the final reviewing court, and the Court no later than thirty (30) calendar days after the final reviewing court's decision vacating, reversing, or materially modifying the Final Order becomes final and non-appealable. A vacatur, reversal, or modification of the Court's award of the Enhancement or Class Counsel's attorneys' fees or costs shall not constitute a vacatur, reversal, or material modification of the Final Order and Judgment within the meaning of this paragraph.

**7. Settlement Payment Procedures**

a. <u>Gross Settlement Amount</u>

In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross Settlement Amount in the amount of Four Hundred and Five Thousand Dollars and Zero Cents ($405,000), subject to a pro rata increase under the condition set forth in Section III(D)(5). The Gross Settlement Amount includes all claims of the Participating Class Members, Settlement Administration Costs, Class Counsel's attorney's fees and costs, LWDA Payment, and Enhancement Award.

Within three (3) business days after the Effective Date, the Settlement Administrator will provide Defendant with the final total calculation of all funds necessary to make the payments required under this Settlement, including all payments from the Gross Settlement Amount (the Court-awarded Class Counsel's attorney's fees payment, Class Counsel's litigation expenses Payment, administrative costs, Enhancement Award, and the portion of the PAGA payment due to the LWDA) and all payments to Participating Class Members from the Net Settlement Amount.

No later than ten (10) business days after the Effective Date, Defendant shall deposit with the Settlement Administrator the Gross Settlement Amount. All of Defendant's obligations under this Settlement are deemed to be satisfied upon Defendant's timely deposit of the entire Gross Settlement Amount and acknowledgement of receipt of said funds and Defendant shall have no further obligations to the Class including, without limitation, any further obligations to make any other payments of any kind to, or on behalf of, the Class (except for the employer's share of payroll taxes).

The Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the Enhancement Award, and employer and employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Ten (10) business days after Defendant fully funds the Settlement, the Settlement Administrator will pay the Class Members' Individual Settlement Payments, Court-approved attorney's fees and costs, Settlement Administration Costs, Enhancement Award, and LWDA Payment.

b. <u>Payment of Attorneys' Fees and Costs</u>

Class Counsel shall submit an application for an award of attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount (which may increase pursuant to Section III(D)(5)'s pro rata increase provision), which, based on the current Gross Settlement Amount, is One Hundred and Forty One Thousand Seven Hundred and Fifty Dollars and Zero Cents ($141,750). Class Counsel shall submit an application for an award of costs not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000). Such application for attorneys' fees and costs shall be heard by the Court at the Final Approval Hearing. Defendant shall not object to or oppose any such application in these amounts.

/ / /

Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Effective Date. To the extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

Any award of attorneys' fees and costs shall include and satisfy all past and future attorneys' fees and costs incurred to prosecute, settle, and participate in administering the Settlement, including obtaining the Final Approval Order. Defendant shall have no obligation to Class Counsel for any attorneys' fees and costs incurred in prosecuting this Action or enforcing the Settlement other than as stated herein.

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s).

d. Payment of Enhancement Award to Named Plaintiff

Subject to Court approval, Plaintiff shall receive an Enhancement Award of up to Five Thousand Dollars and Zero Cents ($5,000), the request for which Defendant will not object to or oppose. The Enhancement Award shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Plaintiff. To the extent that the Court approves less than the amount of Enhancement Award that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

Because it is the intent of the Parties that the Enhancement Award represents payment to Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not withhold any taxes from the Enhancement Award. The Enhancement Award will be reported on Form 1099, which the Settlement Administrator will provide to Plaintiff and to the pertinent taxing authorities as required by law.

Although it is the contemplation of the Parties that the Enhancement Award does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the Enhancement Award constitutes wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the Enhancement Award paid under this Settlement. In addition, Plaintiff shall hold Defendant, Released Parties and Class Counsel harmless and indemnify Defendant, Released Parties and Class Counsel for all taxes, interest, penalties, other payments and costs, incurred by Defendant by reason of any valid claims by taxing authorities relating to the non-withholding of taxes from the Enhancement Award.

e. <u>Payment to the Labor and Workforce Development Agency and the Class for Settlement of PAGA Claims</u>

In consideration of claims made under the California Private Attorneys General Act ("PAGA"), Cal. Labor Code §§ 2698 et seq., Class Counsel will request that the Court approve allocation of Forty Thousand Dollars and Zero Cents ($40,000) of the Gross Settlement Amount to these claims ("PAGA Penalties"). Seventy-five percent (75%) (i.e., Thirty Thousand Dollars and Zero Cents ($30,000)) of the PAGA Penalties will be paid to the California Labor and Workforce Development Agency ("LWDA Payment") and twenty-five percent (25%) (i.e., Ten Thousand Dollars and Zero Cents ($10,000)) will be paid on a pro rata basis to all Aggrieved Employees based on the individual Qualifying Pay Periods worked during the PAGA Period by each Aggrieved Employee, regardless of whether or not they opt out of this Settlement ("PAGA Settlement Payment"). Defendant will not oppose this request. The LWDA Payment and PAGA Settlement Payment will be paid out of the Gross Settlement Amount. The Court's adjustment, if any, of the amount allocated to Plaintiff's PAGA claim will not invalidate this Settlement.

f. <u>Payment of Individual Settlement Payments to Participating Class Members</u>

The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement Payments. The Parties agree that the Net Settlement Amount shall be divided among all Participating

Class Members in proportion to the number of individual Qualifying Workweeks for each Class Member, except for the PAGA portion of the net recovery which will be calculated and distributed to Aggrieved Employees based on their Qualifying Pay Periods as described in section III(D)(7)(e). To calculate the approximate amount each Class Member will receive based on their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class Members during the Class Period and then allocated on a pro rata basis. Each Class Member's individual amount will be included in his, her, or their Class Notice. After final approval by the Court, the Net Settlement Amount will be distributed to Participating Class Members on a pro rata basis based on the individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 20% allocated to wages and 80% to penalties, interest and expense reimbursements. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. The employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all other applicable payroll taxes) will be paid by Defendant separate from and in addition to the Gross Settlement Amount. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Defendant shall not make as part of this Settlement, nor be required to make, any deductions, nor pay any monthly contributions for any insurance, retirement, 401(k) or profit-sharing plans, or any benefit plans related to monies paid as a result of this Settlement.

No later than ten (10) business days after the Preliminary Approval Date, Defendant will provide the Settlement Administrator with a list of the Qualifying Workweeks for each Class Member. Based on that information, the Settlement Administrator shall calculate: (a) the Net Settlement Amount, (b) the Individual Settlement Payment for each Participating Class Member based on the formula specified above, (c) the amount of the Individual Settlement Payments to be allocated to wages, interest and penalties, and reimbursements based on the formula specified above, (d) the employer share of the payroll taxes applicable to the Net Settlement Amount allocated to wages, and

(e) the employee tax withholding amount based on the allocation of each Individual Settlement Payment to wages.

No later than ten (10) business days after Defendant fully funds the Settlement, the Settlement Administrator will pay the Class Members' Individual Settlement Payments, Court-approved attorneys' fees and costs, Settlement Administration Costs, Enhancement Award, and LWDA Payment. Defendant shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 calendar days from the date their Individual Settlement Payment checks are dated to cash their settlement checks. Any amounts from checks that remain unclaimed and/or uncashed after 180 calendar days of issuance will be disbursed to the California State Controller's Office's Unclaimed Property Division.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace based on set criteria and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the Settlement Administrator will also transfer the amount represented by the check to California State Controller's Office's Unclaimed Property Division.

g. <u>No Credit Toward Benefit Plans</u>

The Individual Settlement Payments made to Participating Class Members under this Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Participating Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Participating Class Members may be entitled under any benefit plans.

h. No Effect on Regular Rate or Overtime Compensation

Participating Class Members will receive payment under the Settlement as determined by the Settlement Administrator in accordance with this Agreement. The Parties agree that this payment is not viewed as additional compensation for purposes of calculating a "regular rate" of pay under California or federal law for the period during which it is received, and no additional overtime compensation is required as a result of such payment.

i. Tax Liability

The Parties and Class Counsel and Defense Counsel make no representation as to the tax treatment or legal effect of the payments called for hereunder. Plaintiff, Participating Class Members, and Aggrieved Employees are not relying on any statement, representation, or calculation by the Parties, counsel for the Parties, or the Settlement Administrator in this regard. Plaintiff, Participating Class Members, Aggrieved Employees, and Plaintiff's Counsel understand and agree that they will be solely responsible for the payment of their own portion of any taxes and penalties assessed on the payments that they receive and shall indemnify Defendant from any tax liability that may arise.

j. No Additional Contribution by Defendant

Other than as set forth above, Defendant shall not be called upon or required to contribute additional monies above the Settlement under any circumstances whatsoever except as specifically set forth herein. In the event that this Settlement is canceled, rescinded, terminated, voided, or nullified, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any obligation to pay any portion of the Settlement to anyone under the terms of this Settlement, except for costs already incurred by the Settlement Administrator, and this action shall resume as though no Settlement had occurred with the Action proceeding in the San Joaquin County Superior Court.

## IV. LIMITATIONS ON USE OF THIS SETTLEMENT

### A. No Admission

Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any respect, that it has any liability to anyone under the claims asserted in the Action, and that but for this Settlement a class should not be certified in this Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant.

**B. Non-Evidentiary Use**

Whether or not the Effective Date occurs, neither this Settlement nor any of its terms will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to the terms herein or for Defendant to establish that a Class Member has resolved any of his/her claims released through this Settlement.

**C. Defendant's Right to Terminate Settlement**

Defendant shall have the right at its sole discretion to terminate and void the Settlement if 20% or more of the Class Members timely elect to opt out of the Settlement. If Defendant elects to exercise its right under this paragraph, Defendant shall be liable solely for administrative costs of the Settlement Administrator selected by the Parties incurred up to that point in time and as documented in an itemized invoice by the Settlement Administrator. Defendant agrees that it will not undertake actions to encourage Class Members to opt-out.

**D. Nullification**

The Parties have agreed to the certification of the Class encompassing all claims alleged in the Action for the sole purpose of effectuating this Settlement. If (a) the Court should for any reason fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this Settlement, or (c) the Court should for any reason fail to enter the Final Approval Order, or (d) the Final Approval Order is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the action in its entirety, then: (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to stipulate to class certification of all causes of action pled in the Action as part of the Settlement will have no bearing on, and will not be admissible in connection with, the issue of whether the Class should be certified by the Court in a non-settlement context in this Action or any other action, and in any of those events, Defendant expressly reserve the right to oppose certification of the Class.

Invalidation of any material portion of this Settlement shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

**E. <u>No Publicity</u>**

Plaintiff's Class Counsel shall not publicize the settlement in this Action on their websites or otherwise, including in any print or electronic communication and/or media. Class Counsel may file documents with the Court necessary to effectuate the settlement reached and may respond to inquiries from Class Members and Aggrieved Employees.

## V. RELEASES

**A. <u>Releases by Class Members</u>**

Providing there is Final Approval of this Agreement and the Settlement is fully funded, then as of the Effective Date, Plaintiff and each Participating Class Member, individually and on behalf of their respective successors, assigns, agents, attorneys, executors, heirs and personal representatives ("Releasees"), will release Defendant, together with all of its past, present, and future parents, subsidiaries, affiliated and related entities, predecessor or successor entities, and all present and former owners, boards, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, reinsurers, assigns, attorneys, representatives, heirs, executors, administrators, successors and assigns and all payroll processing vendors that Defendant utilized during the Class Period (collectively, the "Released Parties") from any and all Class Released Claims for the Class Period. "Class Released Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, interest, damages, actions, or causes of action of every nature and description that were alleged, or reasonably could have been alleged, based on the facts and allegations stated in the operative complaint for: (1) failure to pay minimum wages; (2) meal period liability; (3) rest period liability; (4) failure to reimburse for business expenses; (5) failure to provide access to payroll records; (6) failure to provide access to personnel records; (7) failure to provide accurate itemized employee wage statements; (8) failure to pay all wages owed timely and upon separation of employment; (9) violation of Business & Professions Code section 17200, *et seq.*; and any other benefit claimed on account of the allegations asserted in the operative complaint filed by Plaintiff. This release shall apply to all such claims arising at any point during the Class Period. This release excludes the release of claims not permitted by law.

The above release language shall also be included in the Class Notice. Plaintiff and Participating Class Members will release these Class Released Claims from September 26, 2018 through the Preliminary Approval Date of the Settlement or an earlier date at Defendant's discretion per Section III(D)(5).

Any Class Member who validly excludes himself, herself, or themself from the Settlement will still receive a PAGA Settlement Payment, if also an Aggrieved Employee, and will be deemed to have released claims against the Released Parties for civil penalties pursuant to PAGA based on the Released Claims arising during the PAGA Period ("PAGA Released Claims").

**B. <u>Releases by Aggrieved Employees and the State of California</u>**

Providing there is Final Approval of this Agreement and the Settlement is fully funded, then as of the Effective Date, Plaintiff, the State of California, and Aggrieved Employees shall fully and finally release and discharge Defendant and the Released Parties, and each of them, from the PAGA Released Claims and for the PAGA Period. "PAGA Released Claims" means any and all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* that were asserted in Plaintiff's LWDA letter and complaints; and/or that could have been asserted based on the facts and/or allegations in the operative complaint and/or Plaintiff's LWDA letter. "PAGA Released Claims" include, but are not limited to, any and all claims for civil penalties under the PAGA based on alleged unpaid wages (including but not limited to minimum and overtime wages and final pay upon termination), alleged unpaid meal and rest period premiums, itemized wage statement penalties, waiting time penalties, failure to reimburse for necessary business expenses arising under the California Labor Code, and failure to maintain and/or provide access to personnel and payroll records. This release shall apply to all claims arising at any point during the PAGA Period. This release excludes the release of claims not permitted by law.

The above release language shall also be included in the Class Notice. Plaintiff, the State of California, and Aggrieved Employees will release these PAGA Released Claims from September 21, 2022 through the Preliminary Approval Date of the Settlement or an earlier date at Defendant's discretion per Section III(D)(5).

Any Aggrieved Employee who validly excludes himself/herself/themself from the Settlement will still receive a PAGA Settlement Payment, and will be deemed to have released all PAGA Released Claims against the Released Parties.

**C. <u>No Additional Attorneys' Fees or Costs</u>**

Except for the attorneys' fees and costs set forth in this Settlement, the Parties agree to bear their own attorneys' fees and costs related to this Action.

## VI. MISCELLANEOUS PROVISIONS

**A. <u>Amendments or Modification</u>**

The terms and provisions of this Settlement may be amended or modified only by an express written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel and approval by the Court.

**B. <u>Assignment</u>**

None of the rights, commitments, or obligations recognized under this Settlement may be assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Settlement are for the sole benefit of the Parties under this Settlement, and shall not be construed to confer any right or to avail any remedy to any other person.

**C. <u>Governing Law</u>**

This Settlement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

**D. Entire Agreement**

This Settlement, including the Exhibit referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto with respect of the subject matter contained herein. In case of any conflict between text contained in Articles I through VI of this Settlement and text contained in the Exhibit to this Settlement, the former (*i.e.,* Articles I through VI) shall be controlling, unless the Exhibit are changed by or in response to a Court order. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement other than those expressly set forth or referred to herein. This Settlement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of prior agreements or proposals.

**E. Waiver of Compliance**

Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**F. Counterparts and Fax/PDF Signatures**

This Settlement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one instrument. A fax or PDF signature on this Settlement shall be as valid as an original signature.

**G. Meet and Confer Regarding Disputes**

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Settlement, a representative of Class Counsel and a representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

**H. <u>Agreement Binding on Successors</u>**

This Agreement will be binding upon, and inure to the benefit of, the successors in interest of each of the Parties.

**I. <u>Cooperation in Drafting</u>**

The Parties have cooperated in the negotiation and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Settlement.

**J. <u>Fair Settlement</u>**

Plaintiff, Defendant, Class Counsel, and Defense Counsel believe that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arm's-length negotiations, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

**K. <u>Headings</u>**

The descriptive heading of any section or paragraph of this Settlement is inserted for convenience of reference only and does not constitute a part of this Settlement and shall not be considered in interpreting this Settlement.

**L. <u>Notice</u>**

All notices, demands, or other communications given under this Settlement must be in writing and addressed as follows:

*To Plaintiff and the Class*:

Anthony J. Orshansky
anthony@counselonegroup.com
P. Bartholomew Quintans
bart@counselonegroup.com
**COUNSELONE, PC**

*To Defendant*:

Harry B. Gill
harry.gill@hbglaw.com
**HBG LAW, P.C.**

**M. Enforcement of Settlement and Continuing Court Jurisdiction**

To the extent consistent with class action procedure, this Settlement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The disposition entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement.

**N. Mutual Full Cooperation**

The Parties agree fully to cooperate with each other to accomplish the terms of this Settlement, including but not limited to execution of such documents, and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement, to effectuate this Settlement and the terms set forth herein. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

**O. Authorization to Act**

Class Counsel warrants and represents that they are authorized by Plaintiff, and Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action required to effectuate the terms of this Settlement, except for signing the documents, including but not limited to this Settlement, that are required to be signed by the Parties.

**P. No Reliance on Representations**

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Settlement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Settlement, or with respect to any other matters. No representations, warranties, or inducements have been made to any party concerning this Settlement.

**Q. <u>No Collateral Attack</u>**

This Settlement shall not be subject to collateral attack by any Class Member or any recipient of the Class Notice after the Effective Date. Such prohibited collateral attacks shall include but not be limited to claims that the Class Member failed for any reason to receive timely notice of the procedure for disputing the calculation of his, her, or their Individual Settlement Payment.

**R. <u>Invalidity of Any Provision</u>**

Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application and, to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable party.

[SIGNATURES FOLLOW ON NEXT PAGE]

## EXECUTION BY PARTIES

The Parties hereby execute this Settlement.

Dated: 07 / 09 / 2025

Stephen Prince

Stephen Prince

Dated: CHEEMA FREIGHTLINES, LLC

By: ______________________

Name: ______________________

Title: ______________________

APPROVED AS TO FORM AND CONTENT

DATED: June 7, 2025 **COUNSELONE, P.C.**

By:______________________
ANTHONY J. ORSHANSKY
P. BARTHOLOMEW QUINTANS
Attorneys for Stephen Prince

DATED: **HBG LAW, P.C.**

By:______________________
HARRY GILL
Attorney for Cheema Freightlines LLC

**EXECUTION BY PARTIES**

The Parties hereby execute this Settlement.

Dated:

________________________________
Stephen Prince

CHEEMA FREIGHTLINES, LLC

Dated: 7/22/2025 | 7:25 PM PDT

Signed by:

By: Harman Cheema
A79D67BA429B495...

Name: Harman Cheema

Title: President

APPROVED AS TO FORM AND CONTENT

DATED: **COUNSELONE, P.C.**

By:____________________________
ANTHONY J. ORSHANSKY
P. BARTHOLOMEW QUINTANS
Attorneys for Stephen Prince

DATED: 7-22-2025 **HBG LAW, P.C.**

By:____________________________
HARRY GILL
Attorney for Cheema Freightlines LLC

# Exhibit A

**NOTICE OF PENDENCY OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

*Prince v. Cheema Freightlines LLC*

San Joaquin County Superior Court Case No. STK-CV-UOE-2023-0011625 ("Lawsuit")

**PLEASE READ THIS NOTICE CAREFULLY**.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class and representative action settlement reached in this case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California ("Court"), you are notified that preliminary approval of a class and representative action settlement, in a lawsuit filed by a former employee ("Plaintiff" or "Class Representative") against Defendant Cheema Freightlines LLC ("Defendant"), was granted on _________, 2025, which may affect your legal rights.

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment under the settlement, but you have the opportunity to request exclusion from the class settlement (in which case you will not receive payment under the class settlement), object to the class settlement, and/or dispute the number of workweeks credited to you, if you so choose, as explained more fully below.

## I. IMPORTANT DEFINITIONS

**"Class"** or **"Class Member(s)"** means all persons currently or formerly employed as non-exempt employees in California by Defendant Cheema Freightlines LLC during the Class Period.

"**Class Period**" means the period beginning on September 26, 2018 and ending on the date of Preliminary Approval of the Settlement or an earlier date at Defendant's discretion per Settlement Agreement § III(D)(5).

**"Aggrieved Employees"** means all Class Members, whether or not they submit a request for exclusion from the class settlement, employed by Defendant during the PAGA Period.

**"PAGA Period"** means the period beginning on September 21, 2022 and ending on the date of Preliminary Approval of the Settlement or an earlier date at Defendant's discretion per Settlement Agreement § III(D)(5).

**"Participating Class Members"** means Class Members who have not submitted a timely and valid Opt-Out/Request for Exclusion. Class Members who request exclusion ("Non-Participating Class Members") (explained below) retain their right to sue Defendant, if they choose, but will not receive payment under the class settlement.

## II. BACKGROUND OF THE ACTION

The settlement involves claims alleged against Defendant for: (1) failure to pay minimum wages; (2) meal period liability; (3) rest period liability; (4) failure to reimburse for business expenses; (5) failure to provide access to payroll records; (6) failure to provide access to personnel records; (7) failure to provide accurate itemized employee wage statements; (8) failure to pay all wages owed timely and upon separation of employment; (9) unfair business practices; and (10) penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"), codified in Labor Code section 2698 et seq. Defendant denies all of the allegations in the Lawsuit or that it violated any law, and contends that at all times it has fully complied with all applicable federal, state, and local laws.

After investigation and analysis of the legal and factual issues and risks, the parties participated in a full-day mediation before the Honorable Howard R. Broadman (Ret.). Following mediation, and pursuant to a mediator's proposal, the parties reached a settlement. The parties have since entered into the Stipulation of Class Action and PAGA Settlement ("Settlement Agreement"), which was preliminarily approved by the Court on ________, 2025. The Court has appointed CPT Group, Inc. as the administrator of the settlement ("Settlement Administrator"), Plaintiff as representative of the Class ("Class Representative"), and the following law firms as counsel for the Class ("Class Counsel"):

Anthony J. Orshansky
P. Bartholomew Quintans
**CounselOne, PC**
9465 Wilshire Blvd., Suite 300
Beverly Hills, California 90212
Telephone: (310) 277-9945
Facsimile: (424) 277-3727

Daniel F. Gaines
daniel@gaineslawfirm.com
**Gaines & Gaines, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

The settlement represents a compromise and settlement of highly disputed claims. Nothing in the settlement is intended or will be construed as an admission by Defendant that the claims in the action have merit or that Defendant has any liability to Plaintiff, Class Members, or to Aggrieved Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the settlement is fair, reasonable and adequate, and that the settlement is in the best interests of Class Members and Aggrieved Employees.

## III. SUMMARY OF THE PROPOSED SETTLEMENT

### A. Settlement Terms

The total settlement amount is Four Hundred and Five Thousand Dollars ($405,000) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members who do not opt out of the class settlement ("Participating Class Members") is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount and reimbursement of litigation costs and expenses in an amount of up to fifteen thousand dollars ($15,000) to Class Counsel (together, "Attorneys' Fees and Costs"); (2) enhancement award to the Class Representative in an amount not to exceed five thousand dollars ($5,000) for his services and responsibilities in prosecuting the action ("Enhancement Award"); (3) settlement administration costs in an amount not to exceed seven thousand five hundred dollars ($7,500) to the Settlement Administrator ("Settlement Administration Costs"); and (4) the allocation of forty thousand dollars ($40,000) to settle all claims under the PAGA ("PAGA Penalties"), of which 75%, or $30,000, will be paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining 25%, or $10,000, will be paid to all Aggrieved Employees on a pro rata pay period basis.

### B. Distribution Formulas

Each Participating Class Member is eligible to receive a pro rata share of the Net Settlement Amount ("Individual Settlement Payment") based on the number of workweeks he or she worked for Defendant in the State of California as a non-exempt employee during the Class Period. Specifically, the Net Settlement Amount will be divided by the total of all workweeks of Participating Class Members during the Class Period in order to establish the value of each workweek. Each Individual Settlement Payment will be calculated by multiplying the value of a workweek by the number of workweeks worked by the Participating Class Member during the Class Period.

Each Aggrieved Employee will receive a pro rata share of 25% of the PAGA Payment ("PAGA Settlement Payment") based on the number of pay periods he or she worked for Defendant in the State of California as a non-exempt employee during the PAGA Period irrespective of whether he or she is a Participating Class Member. Specifically, 25% of the PAGA Payment (or $10,000) will be divided by the total of all pay periods worked by all Aggrieved Employees during the PAGA Period in order to establish the value of each pay period worked. Each PAGA Settlement Payment will be calculated by multiplying the value of a pay period by the number of pay periods worked by the Aggrieved Employee during the PAGA Period.

Each Individual Settlement Payment will be allocated twenty percent (20%) to wages (which will be reported on an IRS Form W-2), and eighty percent (80%) to interest and penalties (which will be reported on an IRS Form 1099, if applicable). PAGA Settlement Payments will be allocated as one hundred percent (100%) penalties (which will be reported on IRS Form 1099, if applicable). Each Individual Settlement Payment will be subject to reduction for the employee's share of taxes, contributions, and withholdings with respect to the wage portion of the Individual Settlement Payment.

**If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of the payment to which you may be entitled.**

### C. Your Workweeks and Pay Periods Based on Defendant's Records

According to Defendant's records:

> **During the Class Period you worked for Defendant as a non-exempt employee in California for <<Workweeks>> workweeks.**
>
> **During the PAGA Period you worked for Defendant as a non-exempt employee in California for <<PAGA_Payperiods>> pay periods.**

If you wish to dispute the number of workweeks credited to you, you must submit a written letter to the Settlement Administrator. The written dispute must: (a) contain the case name and number; (b) be signed by you; (c) contain your full name, address, telephone number, and the last four digits of your Social Security number; (d) clearly state that you dispute the number of workweeks credited to you and what you contend is the correct number to be credited to you; (e) include information and/or attach documentation demonstrating that the number of workweeks that you contend should be credited to you is correct; and (f) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **on or before <<Response Deadline>>.**

### D. Your Estimated Settlement Award

As explained above, your estimated settlement award is based on the number of workweeks and pay periods credited to you during the applicable periods.

> **Under the terms of the settlement, your Individual Settlement Payment is estimated to be <<estAmount>> and your PAGA Settlement Payment (if applicable) is estimated to be <<PAGA_Amount>>. The Individual Settlement Payment is subject to reduction for the employee's share of taxes, contributions, and withholding with respect to the wage portion of the Individual Settlement Payment.**

Individual Settlement Payments will only be distributed if the Court grants final approval to the settlement.

### E. Released Claims

Plaintiff and each Participating Class Member, individually and on behalf of their respective successors, assigns, agents, attorneys, executors, heirs and personal representatives ("Releasees"), will release Defendant, together with all of its past, present, and future parents, subsidiaries, affiliated and related entities, predecessor or successor entities, and all present and former owners, boards, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, reinsurers, assigns, attorneys, representatives, heirs, executors, administrators, successors and assigns and all payroll processing vendors that Defendant utilized during the Class Period (collectively, the "Released Parties") from any and all Class Released Claims for the Class Period. "Class Released Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, interest, damages, actions, or causes of action of every nature and description that were alleged, or reasonably could have been alleged, based on the facts and allegations stated in the operative complaint for: (1) failure to pay minimum wages; (2) meal period liability; (3) rest period liability; (4) failure to reimburse for business expenses; (5) failure to provide access to payroll records; (6) failure to provide access to personnel records; (7) failure to provide accurate itemized employee wage statements; (8) failure to pay all wages owed timely and upon separation of employment; (9) violation of Business & Professions Code section 17200, et seq.; and any other benefit claimed on account of the allegations asserted in the operative complaint filed by Plaintiff. This release shall apply to all such claims arising at any point during the Class Period. This release excludes the release of claims not permitted by law.

Notwithstanding the foregoing, Plaintiff, the State of California, and Aggrieved Employees shall fully and finally release and discharge Defendant and the Released Parties, and each of them, from the PAGA Released Claims and for the PAGA Period. “PAGA Released Claims” means any and all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. that were asserted in Plaintiff’s LWDA letter and complaints; and/or that could have been asserted based on the facts and/or allegations in the operative complaint and/or Plaintiff’s LWDA letter. “PAGA Released Claims” include, but are not limited to, any and all claims for civil penalties under the PAGA based on alleged unpaid wages (including but not limited to minimum and overtime wages and final pay upon termination), alleged unpaid meal and rest period premiums, itemized wage statement penalties, waiting time penalties, failure to reimburse for necessary business expenses arising under the California Labor Code, and failure to maintain and/or provide access to personnel and payroll records. This release shall apply to all claims arising at any point during the PAGA Period. This release excludes the release of claims not permitted by law.

## IV. <u>WHAT ARE YOUR RIGHTS AND OPTIONS</u>?

### A. <u>Participate in the Settlement</u>

**If you want to receive money from the settlement, you do not have to do anything**. You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the settlement. Unless you elect to exclude yourself from the settlement, you will be bound by the terms of the settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Parties from the Class Released Claims, pursuant to Section III.E above.

You may not request exclusion from the PAGA settlement. If you are an Aggrieved Employee, you will receive your PAGA Settlement Payment, whether or not you choose to request exclusion from the class settlement, and you will be deemed to have released the Released Parties from the PAGA Released Claims (defined above).

As a Participating Class Member, you will not be separately responsible for the payment of attorney’s fees and expenses unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

### B. <u>Request Exclusion from the Settlement</u>

If you do not wish to participate in the class settlement, you may seek exclusion from (or “opt out” of) the class settlement by submitting a timely, written request for exclusion from the class settlement to the Settlement Administrator at the following address:

Cheema Freightlines LLC Settlement Administrator
c/o CPT Group, Inc.
50 Corporate Park
Irvine, California 92606
Telephone: 1-888-xxx-xxxx

The request for exclusion should: (a) include your full name, mailing address, telephone number, and the last four digits of your social security number; (b) include the case name and number of the Lawsuit; (c) include a clear statement that you wish to opt out of the settlement; (d) include your signature; and (e) be mailed to the Settlement Administrator at the address listed above, postmarked **no later than <<Response Deadline>>.**

If the Court grants final approval of the settlement, any Class Member who submits a timely and valid request for exclusion from the class settlement will not be entitled to receive any payment from the class settlement, will not be bound by the class settlement, and will not have any right to object to, appeal, or comment on the settlement. Any Class Members who do not submit a timely and valid request for exclusion from the class settlement will be deemed Participating Class Members and will be bound by all terms of the settlement, including those pertaining to the release of Released Claims stated in Section III.E above, as well as any judgment that may be entered by the Court based thereon.

You may not request exclusion from the PAGA settlement. If you are an Aggrieved Employee, you will receive your PAGA Settlement Payment whether or not you choose to request exclusion from the class settlement, and you will be deemed to have released the Released Parties from the PAGA Released Claims (defined above).

### C. Object to the Settlement

You can object to the terms of the class settlement as long as you have not submitted a request for exclusion from the class settlement. To object to the class settlement, you should provide to the Settlement Administrator a timely written statement of the objection. The written objection should: (a) contain your full name, mailing address, telephone number, and signature; (b) contain the case name and number of the Lawsuit; (c) contain a clear statement of the legal and factual basis for objecting to the settlement; (d) contain a statement whether you intend to appear at the Final Approval Hearing and seek to be heard at the Final Approval Hearing; (e) whether you are represented by counsel and the identity of your counsel; and (f) be mailed to the Settlement Administrator at the address listed in IV.B. and postmarked **no later than <<Response Deadline>>.** You may not object to the PAGA Settlement.

## V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 10C of the San Joaquin County Superior Court, located at 180 E. Weber Ave., Stockton, CA 95202, on **<<Final Approval Hrg Date>>**, at **<<time>>**, to determine whether the settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys' fees and costs to Class Counsel, Enhancement Award to Plaintiff, LWDA Payment, and Settlement Administration Costs to the Settlement Administrator should be awarded.

The hearing may be continued without further notice. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to at your expense.

## VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the Settlement Agreement and other papers which are on file with the Court.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT. NOTICE OF THE FINAL APPROVAL ORDER AND JUDGMENT WILL BE POSTED ON THE SETTLEMENT ADMINISTRATOR'S WEBSITE AT <<URL>>.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: 1-888-XXX-XXXX OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

Exhibit 2

GAINES&GAINES
A PROFESSIONAL LAW CORPORATION
WWW.GAINESLAWFIRM.COM
4550 EAST THOUSAND OAKS BOULEVARD, SUITE 100
WESTLAKE VILLAGE, CALIFORNIA 91362
PHONE (818) 703-8985
FAX (818) 703-8984

September 21, 2023

***Via Certified Mail***

Labor & Workforce Development Agency
By online submission

Cheema Freightlines LLC
16200 S Mckinley Avenue
Lathrop, CA 95330 Defendant mailed certified # 9589071052700506655077

Agent for Service of Process for Cheema Freightlines LLC
HBG Law, PC
4317 North Star Way, Suite B
Modesto, CA 95356 Agent mailed certified # 9589071052700506655084

***Via U.S. Mail***

Cheema Freightlines LLC
P.O. Box 2234
Sumner, WA 98390

Re: ***Labor Code Violations of Cheema Freightlines LLC – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***

Dear LWDA:

This office represents Stephen Prince, a former non-exempt California employee of Cheema Freightlines LLC ("Defendant"). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Northern California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Defendant failed to compensate our client and other Aggrieved Employees for all minimum wages earned, in violation of Labor Code §§ 558, 1194, and 1194.2. Our client and Aggrieved Employees were paid a piece-rate wage for each load they transported. However, our client and other Aggrieved Employees were not paid for non-productive time when they were not driving, even though they were under the control of Defendant and entitled to be paid at least the minimum wage for all hours they were subject to the control of Defendant. In addition, our client and other Aggrieved Employees worked off-the-clock; they were not compensated for their several hour pre- and post-trips every day. Our client and other Aggrieved Employees were also not always compensated for time spent waiting for a shipment. This violates Labor Code §§ 558, 1194, and 1194.2.

Defendant also failed to reimburse our client and other Aggrieved Employees for reasonable and necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, for the use of their personal cell phones and the cost to maintain their truck, including, but not limited to, oil and load locks during fueling. Labor Code § 2802 states that an employer must indemnify their employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, and Defendant's failure to do so has violated this section.

Our client further alleges that Defendant failed to provide him and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client further alleges that Defendant failed to pay him and other Aggrieved Employees all wages due, including, but not limited to, vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment.

The $75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorneys to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.
Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: ____________________
EVAN S. GAINES

GAINES&GAINES
A PROFESSIONAL LAW CORPORATION

WWW.GAINESLAWFIRM.COM

4550 EAST THOUSAND OAKS BOULEVARD, SUITE 100
WESTLAKE VILLAGE, CALIFORNIA 91362

PHONE (818) 703-8985
FAX (818) 703-8984

November 8, 2023

***Via Certified Mail***

Labor & Workforce Development Agency
By online submission

Cheema Freightlines LLC
16200 S Mckinley Avenue
Lathrop, CA 95330 Defendant mailed certified # 9589071052700506655657

Agent for Service of Process for Cheema Freightlines LLC
HBG Law, PC
4317 North Star Way, Suite B
Modesto, CA 95356 Agent mailed certified # 9589071052700506655664

***Via U.S. Mail***

Cheema Freightlines LLC
P.O. Box 2234
Sumner, WA 98390

Re: ***Labor Code Violations of Cheema Freightlines LLC – Compliance Letter of California Labor Code § 2698 - Private Attorneys General Act***
***LWDA Case No.: LWDA-CM-982974-23***

Dear LWDA:

This letter supplements our letter dated September 21, 2023 and alleges additional claims against Cheema Freightlines LLC ("Defendant").

This office represents Stephen Prince, a former non-exempt California employee of Defendant. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client was employed by Defendant in Northern California. Herein, we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its non-exempt California employees ("Aggrieved Employees").

Defendant failed to compensate our client and other Aggrieved Employees for all minimum wages earned, in violation of Labor Code §§ 558, 1194, and 1194.2. Our client and Aggrieved Employees were paid a piece-rate wage for each load they transported. However, our client and other Aggrieved Employees were not paid for non-productive time when they were not driving, even though they were under the control of Defendant and entitled to be paid at least the minimum wage for all hours they were subject to the control of Defendant. In addition, our client and other Aggrieved Employees worked off-the-clock; they were not compensated for their several hour pre- and post-trips every day. Our client and other Aggrieved Employees were also not always compensated for time spent waiting for a shipment. This violates Labor Code §§ 558, 1194, and 1194.2.

Defendant also failed to reimburse our client and other Aggrieved Employees for reasonable and necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, for the use of their personal cell phones and the cost to maintain their truck, including, but not limited to, oil and load locks during fueling. Labor Code § 2802 states that an employer must indemnify their employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, and Defendant's failure to do so has violated this section.

Defendant also failed to timely provide our client and other Aggrieved Employees access to their payroll records, in violation of Labor Code § 226(c). Labor Code § 226(c) requires employers to afford current and former employees the right to inspect or receive a copy of their payroll records within 21 calendar days from the date of a written or oral request. Our client requested to inspect or receive a copy of his payroll records by written request, but Defendant failed to provide him access. Our client is informed and believes that Defendant failed to timely make the contents of payroll records available to other Aggrieved Employees within the time required by statute.

Our client also alleges that Defendant failed to provide him and other Aggrieved Employees access to their personnel records, in violation of Labor Code § 1198.5. Under Labor Code § 1198.5(a), every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee. Under Labor Code § 1198.5(b), unless an extension is granted, the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request. Our client requested to inspect or receive a copy of his personnel records by written request, but Defendant failed to provide him access. Our client is informed and believes that Defendant failed to timely make the contents of personnel records available to other Aggrieved Employees within the time required by statute.

Defendant failed to pay correct premium wages to our client and other Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 9-2001. Our client and other Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. When our client and other Aggrieved Employees were able to take a rest period, they were often late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage Order No. 9-2001.

Defendant failed to pay correct premium wages to our client and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Wage Order 9-2001. Our client and other Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeds five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeds ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. Defendant also failed to maintain records indicating the start and end time of meal periods. This violates Labor Code §§ 226.7, 512, and 558, 1174, 1174.5, and 1198 and IWC Wage Order 9-2001.

Our client further alleges that Defendant failed to provide him and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Our client and other Aggrieved Employees were not paid all wages due, as stated above. As such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client further alleges that Defendant failed to pay him and other Aggrieved Employees all wages due, including, but not limited to, vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, our client and other Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the separation of their employment.

Our office awaits your response.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By: ______________________
EVAN S. GAINES