KINGSLEY SZAMET EMPLOYMENT LAWYERS
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleylawyers.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleylawyers.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

HAINES LAW GROUP, APC
Paul K. Haines, Esq. (SBN 248226)
Sean M. Blakely, Esq. (SBN 264384)
2155 Campus Drive, Suite 180
El Segundo, CA 90245
Tel: (424) 292-2350, Fax: (424) 292-2355
Attorneys for Plaintiff JACKIE SAUCEDO as successor-in-interest to SERGIO SAUCEDO, the Proposed Class, and the aggrieved employees

(Additional Attorneys Listed on the Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TIMOTHY WILLIAMS; JACKIE SAUCEDO AS SUCCESSOR-IN-INTEREST TO SERGIO SAUCEDO; as individuals, on behalf of themselves and others similarly situated,

PLAINTIFFS,

v.

MERCURY AIR CARGO, LLC; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 23STCV21753
(Consolidated with Case No. 23STCV31703)
[Case Assigned for All Purposes to Hon. William F. Highberger in Dept. 10]

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

[Filed concurrently with Declarations of Kelsey M. Szamet, Sean M. Blakely, Timothy Williams, Jackie Saucedo, and Administrator; and [Proposed] Order]

Date: January 8, 2027
Time: 11:30 AM
Dept.: 10

Complaint Filed: September 11, 2023
TAC Filed: January 6, 2026
Trial Date: None set

ABRAMSON LABOR GROUP
WILLIAM ZEV ABRAMSON, Esq. (SBN 289387)
wza@abramsonlabor.com
11846 Ventura Blvd., Suite 100
Studio City, CA 91604
Tel: (213) 493-6300, Fax (213) 382-4083
Attorneys for Plaintiff TIMOTHY WILLIAMS, the Proposed Class, and the aggrieved employees

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 8, 2027 at 11:30 AM in Department 10 of the above-entitled court, located at 312 North Spring Street, Los Angeles, California 90012, in the consolidated action (Case Nos. 23STCV21753 and 23STCV31703), Plaintiffs TIMOTHY WILLIAMS and JACKIE SAUCEDO, as successor-in-interest to SERGIO SAUCEDO ("Plaintiffs"), will move the Court for an order:

(1) Granting preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement") between Plaintiffs and Defendant MERCURY AIR CARGO, LLC ("Mercury"), a copy of which is filed concurrently as Exhibit 1 to the Declaration of Kelsey M. Szamet;

(2) Conditionally certifying, for settlement purposes only, the Settlement Class defined in the Agreement;

(3) Appointing Plaintiffs as Class Representatives; appointing Kingsley Szamet Employment Lawyers, Abramson Labor Group, and Haines Law Group, APC as Class Counsel; and appointing Xpand Legal Consulting LLC as Settlement Administrator;

(4) Approving the proposed Class Notice and the notice plan set forth in the Agreement;

(5) Preliminarily approving the settlement of Plaintiffs' claims for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), including the proposed allocation of $50,000.00 in PAGA penalties; and

(6) Scheduling a final approval hearing and setting the related deadlines.

The Motion is made on the grounds that the proposed settlement is fair, adequate, and reasonable and is within the range of approval, that the Settlement Class satisfies the requirements of Code of Civil Procedure section 382 for settlement purposes, that the proposed notice satisfies due process and California Rules of Court, rules 3.766 and 3.769, and that the PAGA settlement is fair and reasonable in light of PAGA's purposes.

The Motion is based on this Notice of Motion, the attached Memorandum of Points and

Authorities, the concurrently filed Declarations of Kelsey M. Szamet, Sean M. Blakely, Timothy Williams, Jackie Saucedo, and Jonathan Paul of Xpand Legal Consulting LLC, the Agreement and its exhibits, the [Proposed] Order, all other papers and records on file in this action, and such oral and documentary evidence as may be presented at the hearing.

DATED: November 9, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: _____

Kelsey M. Szamet
Attorneys for Plaintiffs and the proposed class

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

A. The Parties and the Allegations 2

B. Procedural History 3

C. Investigation, Discovery, and Mediation 4

III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES 5

A. The Class Is Ascertainable and Numerous 5

B. There Is a Well-Defined Community of Interest 6

1. Common questions predominate 6

2. Plaintiffs' claims are typical 6

3. Plaintiffs and Class Counsel are adequate 7

C. A Class Action Is Superior 7

IV. THE PROPOSED SETTLEMENT 7

A. The Settlement Class and the Aggrieved Employees 7

B. Gross and Net Settlement Amounts 8

C. Calculation of Individual Payments 8

D. Funding and Payment 9

E. Notice and Administration 9

F. Requests for Exclusion, Objections, and Defendant's Rights 10

G. The Releases 10

V. ARGUMENT 11

A. Plaintiffs Request Approval of This Class Action Settlement 11

1. The Strength of Plaintiffs' Case 12

a) Threshold risks that affect every claim: arbitration and class certification 13

b) The Risks Associated with the Wages and Overtime Claim 13

c) The Risks Associated with the Meal Period Claim 14
d) The Risks Associated with the Rest Period Claim..... 15
e) The Risks Associated with the Business Reimbursement Claim..... 15
f) The Risks Associated with the Wage Statement Claim..... 16
g) The Risks Associated with the Waiting Time Penalty Claim..... 16
h) The Risks Associated with the Williams Individual Records Claims 16
i) The Risks Associated with the PAGA Claim 17
2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation..... 17
3. The Risk of Maintaining Class Action Status through Trial..... 17
4. The Amount Offered in Settlement..... 17
a) Plaintiffs' Assessment of Mercury's Maximum Exposure..... 18
5. The Experience and Views of Counsel..... 22
6. The Proposed Plan of Allocation Is Fair and Reasonable..... 22
7. The Proposed Notice Fairly Apprises the Settlement Class Members of the Terms of the Settlement and of Their Rights 22
B. The Scope of the Releases Is Appropriate 23
C. The Requested Payments for Fees, Costs, Service Payments, and Administration Are Disclosed and Subject to Final Approval 24
D. The PAGA Settlement Should Be Approved..... 24
E. The Court Should Appoint the Class Representatives, Class Counsel, and Administrator 25
F. Proposed Schedule 25
VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY 25
VII. CONCLUSION..... 26

TABLE OF AUTHORITIES

FEDERAL CASES

Hesse v. Sprint Corp. (9th Cir. 2010) 598 F.3d 581 23

STATE CASES

Alvarado v. Dart Container Corp. of California (2018) 4 Cal.5th 542 14

Amaro v. Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521 23

Augustus v. ABM Security Services, Inc. (2016) 2 Cal.5th 257 15

Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004 ..... passim

Cartt v. Superior Court (1975) 50 Cal.App.3d 960 22

Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785 24

Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137 ..... 15, 19

Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58 14

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794 ..... 12, 13

Duran v. U.S. Bank National Assn. (2014) 59 Cal.4th 1 13

Estrada v. Royalty Carpet Mills, Inc. (2024) 15 Cal.5th 582 17

Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.5th 858 14

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 ..... 11, 12, 13

Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429 5

Lockheed Martin Corp. v. Superior Court (2003) 29 Cal.4th 1096 ..... 6, 7

Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56 24

Naranjo v. Spectrum Security Services, Inc. (2022) 13 Cal.5th 93 16

Naranjo v. Spectrum Security Services, Inc. (2024) 15 Cal.5th 1056 ..... 16, 21

Rose v. City of Hayward (1981) 126 Cal.App.3d 926 5

Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319 ..... 5, 6

Seastrom v. Neways, Inc. (2007) 149 Cal.App.4th 1496 6

Shaw v. Superior Court (2022) 78 Cal.App.5th 245 25

Simons v. Horowitz (1984) 151 Cal.App.3d 834 7

Trotsky v. Los Angeles Federal Sav. & Loan Assn. (1975) 48 Cal.App.3d 134 22

Turrieta v. Lyft, Inc. (2024) 16 Cal.5th 664 24

Uribe v. Crown Building Maintenance Co. (2021) 70 Cal.App.5th 986 23

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 ..... 12, 13, 22

Williams v. Superior Court (2017) 3 Cal.5th 531 24

STATE STATUTES

Bus. & Prof. Code § 17200 3

Civ. Code § 1542 ..... 11, 23

Code Civ. Proc. § 340, subd. (a) 19

Code Civ. Proc. §§ 377.30–377.32 7

Code Civ. Proc. § 382 ..... 5, 11

Code Civ. Proc. § 384 9

Lab. Code § 201 ..... 2, 4, 20

Lab. Code § 202 ..... 2, 4, 20

Lab. Code § 203 ..... passim

Lab. Code § 226 ..... passim

Lab. Code § 226.7 ..... 2, 4

Lab. Code § 510 ..... 2, 4

Lab. Code § 512 ..... 2, 4

Lab. Code § 1194 ..... 2, 4

Lab. Code § 1194.2 ..... 2, 4

Lab. Code § 1198.5 ..... 3, 16, 21

Lab. Code § 1199 ..... 2, 4

Lab. Code § 2699 ..... passim

Lab. Code § 2699.3 3

Lab. Code § 2802 ..... 2, 3, 19, 21

STATE RULES AND REGULATIONS

Cal. Rules of Court, rule 3.766 23

Cal. Rules of Court, rule 3.769 ..... 11, 23

Cal. Code Regs., tit. 8, § 13520 16

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs TIMOTHY WILLIAMS and JACKIE SAUCEDO, as successor-in-interest to SERGIO SAUCEDO ("Plaintiffs"), submit this Memorandum of Points and Authorities in support of their Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement ("Agreement") reached with Defendant MERCURY AIR CARGO, LLC ("Mercury" or "Defendant") (together, the "Parties"). (Declaration of Kelsey M. Szamet, "Szamet Decl." ¶ 60, Ex. 1.)

This wage-and-hour class and representative action alleges that Mercury failed to provide compliant meal and rest periods, failed to pay overtime at the correct regular rate, failed to reimburse employees for the business use of personal cellular phones, and, as a result, issued inaccurate wage statements and failed to pay all wages due at separation. Plaintiffs also seek civil penalties under PAGA for the same violations. Mercury denies all liability and disputes that any of the claims could be certified or tried on a class or representative basis.

After mediation before Russ J. Wunderli, Esq., and following Class Counsel's review of a sample of time and pay records for the putative class, the Parties agreed to resolve the Action for a non-reversionary Gross Settlement Amount of $1,990,000.00 on behalf of an estimated 2,123 Class Members who worked an estimated 198,727 workweeks between September 11, 2019 and September 9, 2025. (Ex. 1, ¶¶ 1.5, 1.22, 4.1.) No Class Member must submit a claim form to receive an Individual Class Payment. If every deduction requested in the Agreement is approved in full, the estimated Net Settlement Amount is $1,191,666.67, which will be distributed pro rata by workweeks and averages approximately $561.32 per Class Member. (Ex. 1, ¶¶ 3.2, 4.1.) The Agreement also allocates $50,000 to PAGA civil penalties, 75% of which ($37,500.00) will be paid to the Labor and Workforce Development Agency ("LWDA") and 25% of which ($12,500.00) will be distributed to Aggrieved Employees. (Ex. 1, ¶ 3.2.5.)

By this Motion, Plaintiffs ask the Court to:

(1) Grant preliminary approval of the Agreement (Szamet Decl., Ex. 1);

(2) Conditionally certify the Settlement Class for settlement purposes only, appoint

Plaintiffs as Class Representatives, appoint Class Counsel, and appoint Xpand Legal Consulting LLC as Administrator;

(3) Approve the proposed Class Notice (Ex. 1, Ex. A) and direct that it be mailed as set forth in the Agreement;

(4) Preliminarily approve the PAGA settlement; and

(5) Schedule a hearing on final approval and on Class Counsel's application for attorney's fees, costs, and service payments.

II. FACTUAL BACKGROUND

A. The Parties and the Allegations

Mercury Air Cargo, LLC provides cargo services at airports. Plaintiffs are former Mercury non-exempt employees who allege that, throughout their employment, they were generally scheduled to work 6:00 a.m. to 1:30 p.m. on Mondays, Thursdays, and Fridays and 7:00 a.m. to 2:30 p.m. on Tuesdays and Wednesdays, but often worked more than eight hours in a day or forty hours in a week. (Third Amended Class and Representative Action Complaint ("TAC") ¶¶ 2, 26.; Szamet Decl. ¶ 4) Plaintiff Williams worked for Mercury as a customer service representative at its facility at 6040 Avion Drive, Los Angeles, from approximately January 3, 2022 to August 2022, earning $25.00 per hour. (Szamet Decl. ¶ 5). Sergio Saucedo worked for Mercury from approximately March 1996 to September 2023, most recently as a quality assurance and/or customer service representative at Los Angeles International Airport, and passed away on August 3, 2024. Jackie Saucedo prosecutes this action as his successor in interest. (Saucedo Decl. ¶ 6.)

The TAC pleads seven causes of action: (1) failure to pay wages and overtime (Lab. Code, §§ 510, 1194, 1199); (2) failure to provide meal periods (Lab. Code, §§ 226.7, 512); (3) failure to provide rest periods (Lab. Code, § 226.7); (4) failure to reimburse business expenses (Lab. Code, § 2802); (5) inaccurate wage statements (Lab. Code, § 226, subd. (a)); (6) waiting time penalties (Lab. Code, § 203); and (7) civil penalties under PAGA (Lab. Code, § 2699 et seq.) for violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. (TAC at pp. 1–2.; Szamet Decl. ¶ 6).

In substance, Plaintiffs allege that: (a) because of the distance between Mercury's

breakrooms and employees' workstations, and because supervisors checked that employees were back at their stations at the exact end of the 30-minute meal period, employees had to shorten their meal periods by several minutes and therefore did not receive a full thirty minutes of uninterrupted "net rest" away from the workstation (TAC ¶¶ 3, 27, 54); (b) employees did not receive a second meal period on shifts over ten hours and, when meal periods were missed, were required to sign a post-hoc meal period waiver the following day, so that missed meal periods were not validly waived and premium pay was owed (TAC ¶¶ 3, 27, 54); (c) employees likewise could not leave their workstations until the exact start of, and had to return at the exact end of, their ten-minute rest periods, and so never received ten minutes of net rest (TAC ¶¶ 4, 28, 58); (d) employees were required to use their personal cellular phones to communicate with coworkers, supervisors, and customers without reimbursement (TAC ¶¶ 5, 29, 62); (e) because employees were paid on a piece-rate or commission basis, Mercury failed to calculate the regular rate correctly for purposes of overtime (TAC ¶¶ 6, 30, 48); and (f) those violations rendered wage statements inaccurate and left wages unpaid at separation (TAC ¶¶ 7–8, 31–32, 65–72). Plaintiff Williams also alleges, on his own behalf only, that Mercury failed to produce his personnel and payroll records upon written request, in violation of Labor Code sections 226 and 1198.5. (TAC ¶¶ 84–95.) Plaintiffs further contend that Mr. Saucedo's workstation and the time clocks were on the first floor, an eight-to-ten-minute walk from the second-floor break areas, so that he could not obtain a full 30 minutes of rest within the time allowed. Mercury denies each of these allegations. (Szamet Decl. ¶ 7.)

B. Procedural History

On September 11, 2023, Plaintiff Williams filed a class action complaint alleging failure to reimburse business expenses under Labor Code section 2802 and a violation of Business and Professions Code section 17200, and sent written notice of the same violations (and of alleged violations of Labor Code sections 226 and 1198.5) to the LWDA and Mercury pursuant to Labor Code section 2699.3. (Ex. 1, ¶¶ 1.33, 2.1; TAC ¶ 99.; Szamet Decl. ¶ 8.) The LWDA assigned the notice Case No. LWDA-CM-980768-23. (Szamet Decl. ¶ 8, Ex. 2.) On November 16, 2023, Williams filed a First Amended Complaint adding a PAGA cause of action. On December 27, 2023, Sergio Saucedo filed a separate representative action against Mercury seeking PAGA

penalties, Case No. 23STCV31703, which is consolidated with this Action. (Szamet Decl. ¶ 9.) On April 12, 2024, Williams filed a Second Amended Complaint that removed the class allegations and pleaded a single PAGA cause of action. (Ex. 1, ¶ 2.1.) That amendment followed a March 28, 2024 stipulation, entered after Mercury produced an arbitration agreement signed by Williams, to arbitrate his individual PAGA claim, stay his non-individual PAGA claim, and dismiss his class claims without prejudice. On July 25, 2024, Mr. Saucedo filed a JAMS demand on his individual claims, and he passed away on August 3, 2024. (Szamet Decl. ¶ 10.)

The Parties mediated before Russ J. Wunderli on July 11, 2025. (Ex. 1, ¶ 2.3.) The Parties thereafter executed a Memorandum of Understanding on or about September 12, 2025. (Szamet Decl. ¶ 11.) On July 17, 2025, Plaintiffs submitted an amended PAGA notice to the LWDA and Mercury adding Sergio Saucedo and additional alleged violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199. (TAC ¶ 100.) No LWDA letter of intent to investigate was received within sixty-five days. (TAC ¶ 101.) As part of the settlement, the Parties stipulated to the filing of the operative TAC, filed January 6, 2026, which restored the class allegations, incorporated the claims and facts alleged in the Saucedo action, and added Jackie Saucedo, as successor-in-interest to Sergio Saucedo, as a plaintiff. (Ex. 1, ¶ 2.1.) The Parties executed the long-form Agreement in September 2026. (Szamet Decl. ¶ 13.) The Court has not certified a class, and the Action has been stayed except as necessary to effectuate the settlement. (Ex. 1, ¶¶ 2.5, 12.19.)

C. Investigation, Discovery, and Mediation

Before mediation, Plaintiffs obtained through informal discovery time and pay records for the putative class members. (Ex. 1, ¶ 2.4.) Mercury produced time and payroll data for approximately 1,013 employees for July 2022 through July 2024, including time records for 31,585 shifts (a sample of approximately 8.8% of the Class's shifts), sample time records for Mr. Saucedo, and its meal period waiver forms. Plaintiffs retained Berger Consulting Group, which analyzed rounding, overtime, regular-rate, meal period, rest period, sick pay, and expense reimbursement issues and extrapolated the sample to the Class and to the period September 11, 2019 through July 11, 2025. (Szamet Decl. ¶ 14.)

The Parties then participated in a full-day mediation with Russ J. Wunderli, an experienced mediator, which led to the Agreement. (Ex. 1, ¶ 2.3; Szamet Decl. ¶ 11.) The settlement was reached through arm's-length, adversarial negotiations. (Szamet Decl. ¶ 15.) Mercury denies liability, disputes the damages and penalties Plaintiffs claim, and contends that none of Plaintiffs' claims is appropriate for class or representative treatment other than for settlement purposes. (Ex. 1, ¶¶ 2.1, 12.1.) Class Counsel, who have substantial experience prosecuting wage-and-hour class actions, believe the settlement is fair, reasonable, and adequate in light of the risks of continued litigation. (Szamet Decl. ¶ 16; Blakely Decl. ¶¶ 4-7.)

III. THE SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Class actions are authorized by Code of Civil Procedure section 382 where "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." A class may be certified where there is (1) an ascertainable and sufficiently numerous class, (2) a well-defined community of interest, and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The community-of-interest requirement embraces three factors: predominant common questions of law or fact, class representatives with typical claims, and class representatives who can adequately represent the class. (*Ibid.*; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440.) Because the Parties seek certification for settlement purposes only, the Court need not decide whether the claims could be tried on a class basis. (Ex. 1, ¶ 12.1.)

A. The Class Is Ascertainable and Numerous

A class is ascertainable when its members may be identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) The Class is defined by objective criteria, non-exempt employment with Mercury in California during a defined period, and Mercury's payroll and timekeeping records have already

identified an estimated 2,123 Class Members and their workweeks. (Ex. 1, ¶¶ 1.5, 4.1; Szamet Decl. ¶ 17.) Mercury will provide each Class Member's name, last-known address, Social Security number, and Workweeks to the Administrator. (Ex. 1, ¶¶ 1.8, 4.2.) A class of approximately 2,123 employees is far too numerous for joinder. (TAC ¶ 37.)

B. There Is a Well-Defined Community of Interest

1. Common questions predominate

Common questions predominate where the issues that may be tried jointly are so numerous or substantial that maintenance of a class action would be advantageous to the judicial process and the litigants. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104.) "Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker*, *supra*, 53 Cal.4th at p. 1033.) Here, Plaintiffs' theories turn on Mercury's alleged uniform practices, including: whether the layout of Mercury's facilities and its practice of checking that employees were back at their workstations at the exact end of meal and rest periods deprived employees of full, duty-free meal and rest periods; whether Mercury maintained a practice of requiring post-hoc meal period waivers; whether Mercury required employees to use personal cellular phones without reimbursement; whether Mercury's pay plans were calculated correctly for purposes of the regular rate; and whether the resulting wage statements and final pay were accurate. (TAC ¶ 39; Szamet Decl. ¶ 18.) Even if individual employees would need to prove the amount of their damages, class treatment is appropriate where liability can be established through common proof. (*Sav-On*, *supra*, 34 Cal.4th at p. 340.)

2. Plaintiffs' claims are typical

A class representative's claims are typical if the representative and class members have the same or similar injury, the action is based on conduct not unique to the representative, and other class members were injured by the same course of conduct. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Plaintiffs allege that they worked for Mercury as non-exempt employees, were subject to the same meal and rest period practices, cellular-phone expectations, and pay practices as the Class, and suffered the same alleged violations. (TAC ¶¶ 14–15, 40; Williams

Decl. ¶ 3.)

3. Plaintiffs and Class Counsel are adequate

The adequacy requirement is satisfied where the representative's interests are not antagonistic to the class and the representative, through qualified counsel, can vigorously protect the class's interests. (*Lockheed Martin*, *supra*, 29 Cal.4th at p. 1104; *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.) Plaintiff Williams retained competent Counsel and has provided relevant information and documents, reviewed pleadings, attended mediation, stayed abreast of and participated in the litigation. (Williams Decl. ¶ 4.) Plaintiff Jackie Saucedo prosecutes this action as successor-in-interest to Sergio Saucedo, who [passed away on August 3, 2024 and who initiated a separate PAGA action against Mercury. (Saucedo Decl. ¶ 6; Code Civ. Proc., §§ 377.30–377.32.) Before his death, Plaintiff Saucedo performed the dame duties as Plaintiff Williams. (Saucedo Decl. ¶ 2.) Neither Plaintiff has any conflict with the Class, and both have retained counsel experienced in wage-and-hour class actions. (Williams Decl. ¶ 9; Szamet Decl. ¶¶ 19, 54–57; Blakely Decl. ¶¶ 4-7.)

C. A Class Action Is Superior

Class treatment is superior where individual claims are modest and class relief avoids repetitive litigation. Here, the average Class Member's estimated recovery is a few hundred dollars—far too small to justify individual suits—while the claims rest on common practices that can be resolved in a single proceeding. (Szamet Decl. ¶ 20.) Because the Parties have settled, the Court need not consider whether the case would be manageable at trial.

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class and the Aggrieved Employees

The Settlement Class ("Class") consists of "[a]ll current and former non-exempt employees who worked for MERCURY AIR CARGO, LLC, in the State of California between September 11, 2019 to September 9, 2025" (the "Class Period"). (Ex. 1, ¶¶ 1.5, 1.12.) Mercury's records reflect an estimated 2,123 Class Members who worked an aggregate of 198,727 workweeks. (Ex. 1, ¶¶ 4.1, 8.)

"Aggrieved Employees" are all non-exempt employees who are employed or have been

employed by Mercury in the State of California who worked one or more pay periods from September 11, 2022 to September 9, 2025 (the "PAGA Period"). (Ex. 1, ¶¶ 1.4, 1.31.) Mercury estimates there are 1,350 Aggrieved Employees who worked a total of 54,418 PAGA pay periods. (Ex. 1, ¶ 4.1.) The PAGA Period begins one year before the date of Plaintiff Williams's initial PAGA notice. (Ex. 1, ¶¶ 1.31, 1.33.) The Class Period and PAGA Period end on September 9, 2025 approximately 2 months after the mediation. (Szamet Decl. ¶ 21.)

B. Gross and Net Settlement Amounts

Mercury will pay a Gross Settlement Amount of $1,990,000.00 (the "GSA"), plus the employer's share of payroll taxes on the wage portion of the Individual Class Payments, which it will pay separately. (Ex. 1, ¶¶ 1.22, 3.1.) No portion of the GSA will revert to Mercury, and no Class Member must submit a claim in order to be paid. (Ex. 1, ¶ 3.1.) Based on the requested maximum deductions, the estimated Net Settlement Amount is as follows:

Item	Amount
Gross Settlement Amount	$1,990,000.00
Less: Class Counsel Fees Payment (up to 33.33%)	($663,333.33)
Less: Class Counsel Litigation Expenses Payment (up to)	($50,000.00)
Less: Class Representative Service Payments (up to $10,000 each × 2)	($20,000.00)
Less: Administration Expenses Payment (up to)	($15,000.00)
Less: PAGA Penalties ($37,500.00 to LWDA; $12,500.00 to Aggrieved Employees)	($50,000.00)
Estimated Net Settlement Amount (maximum deductions)	**$1,191,666.67**

(Ex. 1, ¶¶ 1.28, 3.2.) The amounts for attorney's fees, costs, service payments, and administration are maximums that remain subject to Court approval; any amount the Court declines to award remains in the Net Settlement Amount for distribution to Participating Class Members. (Ex. 1, ¶¶ 3.2.1–3.2.3.) The GSA represents approximately $10.01 per Class Workweek, and the estimated Net Settlement Amount represents approximately $6.00 per Class Workweek. (Szamet Decl. ¶ 22.)

C. Calculation of Individual Payments

Each Participating Class Member's Individual Class Payment equals the Net Settlement Amount divided by the total Workweeks of all Participating Class Members, multiplied by that Class Member's own Workweeks. (Ex. 1, ¶ 3.2.4.) A "Workweek" is any week in which the Class

Member worked at least one day for Mercury during the Class Period. (Ex. 1, ¶ 1.45.) Amounts attributable to Class Members who validly opt out remain in the Net Settlement Amount and are redistributed pro rata to Participating Class Members. (Ex. 1, ¶ 3.2.4.2.) Twenty percent of each Individual Class Payment is allocated to wages (reported on IRS Form W-2, subject to withholding), and eighty percent to interest and penalties (reported on IRS Form 1099). (Ex. 1, ¶ 3.2.4.1.) Each Aggrieved Employee, whether or not he or she opts out of the class settlement, will receive an Individual PAGA Payment equal to a pro rata share of the $12,500.00 Aggrieved Employee allocation based on PAGA pay periods worked. (Ex. 1, ¶¶ 3.2.5, 3.2.5.1, 7.5.4.) The Class Notice will state each Class Member's estimated payment and the Workweeks and PAGA pay periods used to calculate it, and Class Members may dispute those figures. (Ex. 1, ¶¶ 7.4.2, 7.6.)

D. Funding and Payment

Mercury will fund the GSA and its share of payroll taxes within 14 days after the Effective Date, and the Administrator will mail all payments within 14 days after funding. (Ex. 1, ¶¶ 4.3, 4.4.) Payments to Class Counsel and the Class Representatives may not precede payments to Class Members and Aggrieved Employees. (Ex. 1, ¶ 4.4.) Checks will remain negotiable for at least 180 days; the Administrator will update addresses through the National Change of Address database before mailing, will re-mail returned checks, and will send replacement checks on request. (Ex. 1, ¶¶ 4.4.1–4.4.2.) Funds represented by checks that remain uncashed after the void date will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class Member, leaving no unpaid residue within the meaning of Code of Civil Procedure section 384. (Ex. 1, ¶ 4.4.3.)

E. Notice and Administration

Mercury must deliver the Class Data to the Administrator within 15 days after preliminary approval; the Administrator must mail the Class Notice, in English with a Spanish translation, by first-class mail within 14 days after receiving the Class Data, after updating addresses using the National Change of Address database. (Ex. 1, ¶¶ 1.11, 4.2, 7.4.2.) Notices returned as undeliverable will be re-mailed within three business days to any forwarding address or, if none,

to an address located through a skip trace and Class Member Address Search; the response deadline is extended by 14 days for re-mailed notices. (Ex. 1, ¶¶ 7.4.3–7.4.4.) The Administrator will maintain a website, e-mail address, and toll-free number, will provide weekly reports to counsel, and will provide a declaration of due diligence before the final approval motion is filed. (Ex. 1, ¶¶ 7.8.1–7.8.5.) The Parties selected Xpand Legal Consulting LLC as Administrator, subject to a "not to exceed" fee of $15,000.00 absent a showing of good cause. (Ex. 1, ¶¶ 1.2, 3.2.3, 7.1.) The Parties obtained competing bids, and Xpand Legal Consulting LLC was selected as their bid was the lowest and they have years of administration experience, data security, insurance, and the absence of conflicts. (Szamet Decl. ¶ 24; Paul Decl. ¶ 2.)

F. Requests for Exclusion, Objections, and Defendant's Rights

Class Members have 60 days from mailing (74 days for re-mailed notices) to request exclusion, to object, or to dispute their Workweeks or pay periods. (Ex. 1, ¶¶ 1.43, 7.4.4, 7.5, 7.6, 7.7.) Class Members who do nothing are Participating Class Members. (Ex. 1, ¶ 7.5.3.) Only Participating Class Members may object to the class action components of the settlement, in writing to the Administrator or by appearing at the final approval hearing. (Ex. 1, ¶ 7.7.) Aggrieved Employees cannot opt out of the PAGA settlement. (Ex. 1, ¶ 7.5.4.)

If the actual number of Class Workweeks exceeds 218,600 (10% above the 198,727 estimate), the GSA increases pro rata for each additional workweek, although Mercury may instead shorten the Class Period so that it encompasses no more than 218,600 workweeks. (Ex. 1, ¶ 8.1.) Second, if more than 5% of Class Members (approximately 106 of 2,123) submit valid requests for exclusion, Mercury may elect to withdraw from the settlement within seven days after the Administrator provides the final Exclusion List, in which event the settlement is void and Mercury remains responsible for administration expenses incurred to that point. (Ex. 1, ¶ 9.)

G. The Releases

Upon entry of a final judgment and full funding of the GSA and employer payroll taxes, Participating Class Members will release the Released Parties from "all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action," including the categories of wage-and-hour

claims enumerated in paragraph 5.2 of the Agreement. (Ex. 1, ¶¶ 5, 5.2.) The Released Parties are Mercury and its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, parents, subsidiaries, and affiliates. (Ex. 1, ¶ 1.41.) Participating Class Members do not release claims for wrongful termination, discrimination under the Fair Employment and Housing Act, unemployment, disability, social security, or workers' compensation benefits, vested benefits, or claims based on facts arising outside the Class Period. (Ex. 1, ¶ 5.2.)

Aggrieved Employees, including those who opt out of the class settlement, release the Released Parties from all claims for PAGA penalties "that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and/or stated in any PAGA [notice]," as enumerated in paragraph 5.3 of the Agreement. (Ex. 1, ¶¶ 5, 5.3, 7.5.4.) Plaintiffs, in addition, give a general release of all claims arising during the Class Period and related to their employment with Mercury or its cessation, together with a waiver of Civil Code section 1542, in exchange for the consideration provided under the Agreement, including the Class Representative Service Payments they will request. (Ex. 1, ¶¶ 3.2.1, 5.1, 5.1.1.) The Parties have made no other agreement in connection with the proposed settlement. (Szamet Decl. ¶ 26; Cal. Rules of Court, rule 3.769(b).)

V. ARGUMENT

A. Plaintiffs Request Approval of This Class Action Settlement

A class action settlement requires court approval. (Code Civ. Proc., § 382; Cal. Rules of Court, rule 3.769(a).) At the preliminary approval stage, the Court determines whether the proposed settlement is "within the range of possible approval" and whether notice should issue; the Court makes the ultimate fairness determination at the final approval hearing after notice and an opportunity for class members to be heard. (Cal. Rules of Court, rule 3.769(c)–(g).) The Court has a fiduciary responsibility to the absent class members and must satisfy itself that the settlement is fair, adequate, and reasonable. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) Relevant factors include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the

amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Kullar*, *supra*, 168 Cal.App.4th at p. 128.) A settlement is presumed fair where it was reached through arm's-length bargaining, investigation and discovery were sufficient to allow counsel and the Court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802; *Kullar*, *supra*, 168 Cal.App.4th at p. 129; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) A settlement need not provide the maximum possible recovery; it must fall within the range of reasonableness. (*Wershba*, *supra*, 91 Cal.App.4th at p. 250.)

Because the Court's review depends on information about "the nature and magnitude of the claims being settled, as well as the impediments to recovery," Plaintiffs set out below, claim by claim, the maximum potential exposure Plaintiffs estimate for each claim and the risks that informed the discount reflected in the settlement. (See *Kullar*, *supra*, 168 Cal.App.4th at p. 133.)

The proposed Settlement satisfies each of these factors. (Szamet Decl. ¶ 27.) Class Counsel conducted an investigation of Mercury's time and pay records and policies before entering into settlement negotiations (see Section II.C), which allowed them to evaluate the strength of the case and the risks of continued litigation. (Szamet Decl. ¶¶ 14, 27.) The Action has been pending since September 2023. The LWDA received Plaintiffs' PAGA notices and will receive this Motion and the Agreement at the same time as the Court, as Labor Code section 2699, subdivision (s)(2), requires. (See Section VI, *infra*.) The reaction of the Class cannot yet be assessed; Plaintiffs will report the number of exclusion requests and objections with their motion for final approval. Class Counsel is experienced in handling wage and hour class actions and, after weighing the following factors, supports the Agreement. (Szamet Decl. ¶ 56.)

1. <u>The Strength of Plaintiffs' Case</u>

A proposed class action settlement need not achieve the maximum recovery theoretically available; it need only fall within the range of reasonableness in light of the strength of Plaintiffs' claims, the risk, expense, complexity, and likely duration of further litigation, and the risk of

maintaining class action status through trial. (*Kullar*, *supra*, 168 Cal.App.4th at p. 128; *Wershba*, *supra*, 91 Cal.App.4th at p. 245; *Dunk*, *supra*, 48 Cal.App.4th at p. 1801.) Although Plaintiffs believe the claims are meritorious, continued litigation would present substantial risks at every stage. Plaintiffs' counsel evaluated Mercury's potential exposure using the time, payroll, and policy data produced for mediation, and a damages model prepared by their retained expert. (Szamet Decl. ¶ 28.)

a) Threshold risks that affect every claim: arbitration and class certification

Several threshold issues bear on every class claim. First, Mercury produced an arbitration agreement signed by Plaintiff Williams, and the Parties stipulated in March 2024 to arbitrate his individual PAGA claim and dismiss his class claims without prejudice; Mr. Saucedo likewise initiated a JAMS arbitration of his individual claims before he passed away. If other Class Members signed arbitration agreements with class waivers, Mercury would move to compel individual arbitration as to them, which would remove those employees from any certified class. (Szamet Decl. ¶ 29.) Second, Mercury would oppose certification on the ground that individualized issues such as each employee's shift length, work location, supervisor, and recorded breaks predominate over common questions. (See *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1.) Although California courts routinely certify classes based on uniform policies (*Brinker*, *supra*, 53 Cal.4th at p. 1033), a denial of certification would leave Class Members with only the individual recoveries they could pursue on their own.

b) The Risks Associated with the Wages and Overtime Claim

The TAC alleges that employees were paid on a piece-rate or commission basis and that Mercury failed to include that pay in the regular rate. (TAC ¶¶ 6, 30, 46–48.) Mercury's payroll data show instead that the Class was paid hourly (a weighted average base rate of about $21.04 and a reported regular rate of about $23.85), with additional compensation paid in nine bonus and premium codes (including benefits premiums, lead premiums, dangerous goods pay, and shift premiums), and that Mercury included those payments in the regular rate when calculating overtime. Only sick pay was paid at the base rate rather than the regular rate. (Szamet Decl. ¶ 30.)

After offsetting overtime already paid on those items, the data show no net regular-rate overtime underpayment, so this theory of liability adds little or no value. (Szamet Decl. ¶ 31.) The rounding claim is likewise weak: expert analysis revealed that employees were, on net, overpaid by rounding, and Mercury would argue that its rounding practice was neutral and lawful. Id. The remaining daily-overtime claim is small because employees were scheduled for seven working hours per day and the data show that unpaid overtime occurred in only about 3.6% of the pay periods analyzed. Id. Mercury would also argue that discretionary payments are properly excluded from the regular rate (see *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542; *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 [regular rate includes non-discretionary payments]). Plaintiffs therefore contend that it is appropriate to discount this claim substantially. (Szamet Decl. ¶ 31.)

c) The Risks Associated with the Meal Period Claim

An employer must relieve the employee of all duty for a thirty-minute period and need not ensure that the employee actually takes it. (*Brinker*, *supra*, 53 Cal.4th at pp. 1040–1041.) Where time records show non-compliant meal periods, a rebuttable presumption of a violation arises (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74–77), and the records here show that 98.2% of the sampled shifts of 10 to 12 hours lacked a recorded second meal period. But Mercury produced meal period waiver forms for shifts of six hours or less and for second meal periods on shifts of up to twelve hours, and the expert estimated that giving effect to those waivers would reduce the number of unique violations from approximately 114,056 to approximately 52,524 and would reduce the violation rate net of the premiums Mercury already paid to zero (the model shows a negative net rate of approximately 1.8%). If the waivers are valid, therefore, the second meal period claim has no net value. (Szamet Decl. ¶ 32.) Plaintiffs contend that Mercury required employees to sign waivers after the fact and therefore that those waivers are not valid (TAC ¶¶ 3, 27, 54), but that contention depends on the forms and on testimony that may vary by supervisor and period, thereby potentially precluding class certification of this claim. (Szamet Decl. ¶ 32.) Mercury also paid meal premiums throughout the period (approximately 69,834 payments when extrapolated to the Class), which supports a good-faith defense to derivative penalties. Id.

Plaintiffs' alleged "net rest" theory that employees could not clock out until the scheduled start of the meal period and had to return to their workstations on the first floor exactly 30 minutes later, although the break areas were a walk of eight to ten minutes away on the second floor, is supported by the records, which show that first meal periods were recorded at exactly 30 minutes in about 46% of cases, but the distance and layout facts would need to be established through declaration or testimony and Defendant would argue this is a necessarily individualized inquiry. (Szamet Decl. ¶ 33.) Plaintiffs therefore substantially discounted the meal period claim, and the Parties' settlement fairly values the meal period claim in light of the recorded-violation figures. (Szamet Decl. ¶ 33.)

d) The Risks Associated with the Rest Period Claim

Employees are entitled to rest periods in which they are relieved of all duty and employer control. (*Brinker*, *supra*, 53 Cal.4th at pp. 1028–1029; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257.) Plaintiffs allege that supervisors required employees to be back at their stations at the exact end of the ten-minute rest period and could not leave until the exact start, and that Mr. Saucedo's first-floor workstation was an eight-to-ten-minute walk from the second-floor break areas. (TAC ¶¶ 4, 28, 58.) Because there are no rest period records, the violation rate would rest on witness testimony from a sample of employees, and Mercury would presumably present testimony that employees took rest periods in other areas, or in the manner its policies permit. (Szamet Decl. ¶ 34.) The record that unique meal violations occurred on only about 11.5% of shifts is the kind of data a fact-finder could use to infer a violation rate far below 100%. If the rest violation rate matched the 11.5% unique meal violation rate, the rest premium exposure would fall from $24,401,394 to approximately $2,806,160. Plaintiffs therefore substantially discounted this claim. (Szamet Decl. ¶ 34.)

e) The Risks Associated with the Business Reimbursement Claim

Liability requires proof that employees were required to use their personal phones for work (or that Mercury knew or should have known they did so) and that they incurred a cost. (TAC ¶¶ 5, 29, 62.) Mercury would argue that it provided company equipment as a means of communication, that any personal phone use was voluntary, and that any cost was de minimis or

non-existent for employees on unlimited plans. (See *Cochran*, *supra*, 228 Cal.App.4th at p. 1144.) Variation in phone use by job, shift, and supervisor would also weigh against certification, and the $20 monthly figure is an estimate that Mercury would contest. Mercury's pay data also show that it paid small reimbursements for safety equipment and safety shoes. Plaintiffs therefore discounted this claim. (Szamet Decl. ¶ 35.)

f) The Risks Associated with the Wage Statement Claim

The claim is derivative of the meal, rest, overtime, and reimbursement claims and rises or falls with them. In addition, penalties require a "knowing and intentional" failure and an injury. (Lab. Code, § 226, subd. (e)(1), (2).) An employer's objectively reasonable, good-faith belief that its wage statements were compliant defeats penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.) Because the claims on which the wage statement claim depends including the "net rest" theory of meal and rest period violations are novel and contested, and because Mercury paid meal premiums, Plaintiffs believed that Mercury would have a substantial good-faith defense. (See *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93 [premium pay is wages and must be reported].) Plaintiffs therefore contend that it was appropriate to substantially discount this claim for the purposes of resolution. (Szamet Decl. ¶ 36.)

g) The Risks Associated with the Waiting Time Penalty Claim

Waiting time penalties require willfulness, and a good-faith dispute that wages are due defeats willfulness. (Cal. Code Regs., tit. 8, § 13520; *Naranjo* (2024), *supra*, 15 Cal.5th 1056.) The claim is entirely derivative of the unpaid-wage, overtime, and premium-pay claims, so any risk to those claims is a risk to this claim, and Mercury would argue that its positions on the meal, rest, and regular-rate issues were taken in good faith. Plaintiffs therefore substantially discounted this claim. (Szamet Decl. ¶ 37.)

h) The Risks Associated with the Williams Individual Records Claims

Plaintiff Williams alleges that Mercury did not respond to his August 23, 2023 written request for his personnel and payroll records, which Mercury received on or about August 30 and September 4, 2023. (TAC ¶¶ 86–87.) The statutory penalty is $750 for each violation. (Lab. Code, §§ 226, subd. (f), 1198.5, subd. (k).) The claim is individual to Plaintiff Williams, and its maximum

value is therefore approximately $1,500 (two statutory penalties) plus fees. (Szamet Decl. ¶ 38.)

i) The Risks Associated with the PAGA Claim

First, PAGA penalties are derivative of the underlying violations and carry each of the merits risks described above. Second, the Court may award less than the maximum penalty where the maximum would be unjust, arbitrary, and oppressive, or confiscatory (Lab. Code, § 2699, subd. (e)(2)), and has authority to limit the scope of a PAGA claim to ensure it can be effectively tried (Lab. Code, § 2699, subd. (p); see *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582). Third, the Class is arguably being compensated for the same underlying violations through the class settlement, which weighs against a large duplicative penalty. Plaintiffs therefore assigned $50,000 to PAGA penalties. (Szamet Decl. ¶ 39.)

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

Absent settlement, the Parties would face contested motions on relation back and limitations, a contested motion for class certification, expert discovery on time and payroll data, depositions of Plaintiffs and Mercury's person(s) most qualified on its break, timekeeping, and pay practices, summary adjudication, and a trial that would require sampling or other proof of violation rates across approximately 2,123 employees. (Szamet Decl. ¶ 40.) Any judgment would be subject to post-trial motions and an appeal. The settlement provides certain and prompt relief.

3. The Risk of Maintaining Class Action Status through Trial

No class has been certified. (Ex. 1, ¶ 2.5.) Although Plaintiffs believe the claims are suitable for certification, certification is contested and discretionary, and a certified class may be decertified. (Szamet Decl. ¶ 41.) The risks identified above—variation among shifts, work locations, supervisors, and pay plans, and the individualized nature of the "shortened meal period" and rest period theories—would be central to Mercury's opposition. Mercury also argued that Plaintiffs and the overwhelming majority of Class Members signed arbitration agreements with class action waivers. As such, Mercury contends that absent its agreement to not raise the arbitration agreements as an affirmative defense, any recovery to the Class Members would be limited to only the employees' potential 25% share of PAGA civil penalties

4. The Amount Offered in Settlement

The Settlement of $1,990,000.00 was the product of adversarial, arm's-length negotiations with the assistance of an experienced mediator, after Class Counsel's investigation and evaluation of the law, the risks, and the penalties reasonably likely to be awarded were the trier of fact to find Mercury liable. (Szamet Decl. ¶ 42.) Further, an expert analyzed the data and built a damages model. Id.

a) Plaintiffs' Assessment of Mercury's Maximum Exposure

Each "maximum exposure" figure below assumes Plaintiffs prevail on every contested issue, that a class is certified, and that the trier of fact awards the full statutory amount; it is not a prediction of the likely recovery. Set forth below, claim by claim, are the components of that exposure; the risks that informed the discount are described above. (Szamet Decl. ¶ 43.)

Wages and Overtime Claim

Plaintiffs' expert, applying the time and payroll data, valued unpaid overtime on a five-day, eight-hour workweek basis at $82,772 in unpaid half-time premiums. The expert also valued unpaid wages due to rounding of recorded time at $296,626, using a method that counts only the pay periods in which an employee was underpaid by rounding, even though across all employees, Mercury's rounding practice resulted in a net overpayment and allegedly underpaid sick pay computed at the regular rate at $563,506. The expert's calculation of the regular-rate overtime theory pleaded in the TAC—that non-discretionary pay was omitted from the regular rate—yielded a gross figure of approximately $1,860,236 for pay periods with both overtime and additional compensation, but after offsetting the overtime premium Mercury actually paid on that additional compensation, the net result was an overpayment of approximately $14,830, which the model therefore does not count. (Szamet Decl. ¶ 44.)

Meal Period Claim

Using Mercury's time records, Plaintiffs' expert identified "unique" meal period violations as shifts with a first meal period recorded after the fifth hour, a first meal period shorter than 30 minutes, no first meal period on a shift over five hours, or no second meal period on a shift over ten hours, on approximately 11.5% of shifts over five hours, or approximately 114,056 shifts when extrapolated to the Class, for premiums of $2,710,587. After subtracting the $1,645,042 in meal

premiums Mercury actually paid, the net premium exposure is $1,065,545, which corresponds to a net violation rate of approximately 4.5% after offsetting premiums already paid. This figure assumes that Mercury's meal period waivers are invalid. The violations are driven principally by late first meal periods (approximately $956,000 in gross premiums) and missed second meal periods on shifts of ten to twelve hours (approximately $1,241,000, including shifts over twelve hours), together with missed first meal periods (approximately $776,000); short first meal periods account for only approximately $97,000. These figures count only violations visible in the time records; they do not value Plaintiffs' theory that even a recorded 30-minute meal period is not a compliant meal period because employees could not reach a break area and return within it. (Szamet Decl. ¶ 45.)

Rest Period Claim

Employers are not required to record rest periods, so Plaintiffs' expert assumed a 100% violation rate for every shift of at least 3.5 hours, approximately 1,017,109 shifts when extrapolated to the Class, at an average regular rate of approximately $23.85 for premiums of $24,401,394. This is the largest component of Plaintiffs' exposure model, representing approximately 88% of the model's total damages (before penalties). Plaintiffs do not contend that a 100% violation rate is realistic. (Szamet Decl. ¶ 46.)

Business Reimbursement Claim

An employer must indemnify employees for all necessary expenditures incurred in the discharge of their duties, including a reasonable percentage of the cost of a personal cellular phone required for work. (Lab. Code, § 2802, subd. (a); *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.) Plaintiffs' expert valued reimbursement at $20 per employee per month, for a total of $1,280,540 extrapolated to the Class. (Lab. Code, § 2802, subd. (b) [interest]; *id.*, subd. (c) [fees].) (Szamet Decl. ¶ 47.)

Wage Statement Claim

An employee injured by a knowing and intentional failure to provide an accurate wage statement may recover the greater of actual damages or $50 for the initial pay period and $100 for each subsequent pay period, up to $4,000 per employee. (Lab. Code, § 226, subd. (e)(1).) The

statute carries a one-year limitations period. (Code Civ. Proc., § 340, subd. (a).) Plaintiffs' expert applied the statutory formula to 1,013 employees and 30,386 pay periods from September 11, 2022 through July 11, 2025 assuming that the claim relates back to the original complaint and that every wage statement in that period was deficient, for a maximum penalty of $2,987,986. (Szamet Decl. ¶ 48.)

Waiting Time Penalty Claim

An employer that willfully fails to pay all wages due at separation owes the employee's daily wage for each day the wages remain unpaid, up to thirty days. (Lab. Code, §§ 201–203.) Plaintiffs' expert estimated approximately 1,000 former employees beginning September 11, 2020 and assumed the full thirty-day penalty at eight hours per day, for a maximum of $5,030,595. (Szamet Decl. ¶ 49.)

PAGA Claim

Plaintiffs' expert calculated PAGA penalties at $100 per aggrieved employee per pay period for each distinct Labor Code violation, using biweekly pay periods and 1,013 aggrieved employees, for a stacked total of $11,596,900, consisting of: rest breaks, $3,036,400; wage statements, $3,036,400; reimbursements, $3,038,600; unpaid wages, $1,121,600; meal breaks, $850,000; sick pay, $499,600; and waiting time, $14,300. (Szamet Decl. ¶ 50.) That figure "stacks" separate penalties for each violation in the same pay period; courts have not uniformly accepted that approach. It also applies the $100 rate throughout; applying the $200 subsequent-violation rate pleaded in the TAC (¶ 97) would increase the figure. The $50,000 PAGA allocation is approximately 1.65% of counsel's realistic maximum and 0.43% of the stacked total. Counsel, however, considered a single $100 penalty per aggrieved employee per pay period—approximately $3,038,600 across the 30,386 PAGA pay periods—to be the realistic maximum for this claim.

Maximum Exposure

Taking the foregoing claims together, Plaintiffs' expert estimated Mercury's total maximum exposure—before any discount for risk—at $38,747,564, comprised of $27,690,383 in damages (unpaid wages, meal and rest period premiums, sick pay, and unreimbursed expenses),

$8,018,581 in waiting time and wage statement penalties, and $3,038,600 in PAGA penalties (counsel's realistic maximum of one $100 penalty per employee per pay period; if the stacked PAGA total of $11,596,900 were used, the total would be $47,305,864). (Szamet Decl. ¶ 51.) The GSA of $1,990,000.00 represents approximately 5.1% of that theoretical maximum, approximately 5.6% of the non-PAGA exposure, and approximately 7.2% of the damages component alone. The summary below shows the maximum exposure for each claim and the principal factors that informed the discount:

Claim (TAC cause of action)	Maximum exposure (undiscounted)	Principal discount factors
1. Unpaid wages / overtime	$82,772 overtime; $296,626 rounding and $563,506 sick pay (not separately pleaded); regular-rate theory nets to approximately $0	Bonuses already in regular rate; net overpayment from rounding; minimal overtime; sample/extrapolation
2. Meal periods	$1,065,545 (net of premiums paid, assuming waivers invalid; $2,710,587 gross)	Valid waivers would reduce net violation rate to 0%; premiums paid; good-faith; certification
3. Rest periods	$24,401,394 (100% violation rate)	No records; assumed 100% rate; layout/policy variation; certification
4. Expense reimbursement (§ 2802)	$1,280,540 ($20/month)	Necessity and use of personal phones; company devices; estimate of cost
5. Wage statements (§ 226)	$2,987,986 (1,013 employees; assumes relation back)	Derivative; knowing-and-intentional and injury requirements; Naranjo good-faith defense; one-year limitations
6. Waiting time (§ 203)	$5,030,595 (≈1,000 former employees, 30 days)	Derivative; good-faith dispute / willfulness; approximate count
7. PAGA penalties	$3,038,600 (counsel's realistic maximum: one $100 penalty per employee per pay period); $11,596,900 if stacked by violation	Derivative; exhaustion and notice scope; standing; stacking; discretion to reduce; 2024 reforms; overlap with class relief
Williams individual records claims (§§ 226(f), 1198.5(k))	≈ $1,500	Individual to Plaintiff Williams
Total	**$38,747,564**	**GSA = 5.1% of total; 5.6% of non-PAGA total; 7.2% of damages only**

Because the theoretical maximum assumes a 100% rest-period violation rate, the full thirty-day waiting time penalty for approximately 1,000 former employees, and PAGA penalties, the proper comparison is to the amount realistically recoverable after accounting for the limitations, arbitration, certification, proof, and good-faith risks discussed above. For example, if the rest-period violation rate is assumed to equal the 11.5% unique meal violation rate shown in Mercury's own time records, the rest-period premium exposure falls from $24,401,394 to approximately

$2,806,160, and total damages (before penalties) fall from $27,690,383 to approximately $6,095,149, of which the GSA represents approximately 33%. On a per employee basis, the GSA represents approximately $937 per Class Member and $10.01 per Class Workweek, and the estimated net payment averages approximately $561 per Class Member and $6.00 per Class Workweek. (Szamet Decl. ¶ 52.) Even if Plaintiffs prevailed at certification and trial, Class Members would not be paid for years given post-trial motions and appeals, and the time value of a certain, present recovery further supports the compromise. Class Counsel believes the GSA is fair, reasonable, and within the range of reasonableness warranting preliminary approval. (Szamet Decl. ¶ 53; Blakely Decl. ¶ 7.)

5. The Experience and Views of Counsel

Class Counsel have substantial experience prosecuting wage-and-hour class and PAGA actions, as set out in their declarations, and they believe the settlement is fair, reasonable, and in the best interests of the Class. (Szamet Decl. ¶¶ 54–57; Blakely Decl. ¶¶ 4-7.) See *Wershba*, *supra*, 91 Cal.App.4th at p. 245 [court may give weight to experienced counsel's recommendation].

6. The Proposed Plan of Allocation Is Fair and Reasonable

A plan of allocation is reviewed under the same fair, adequate, and reasonable standard as the settlement as a whole. Here, the Net Settlement Amount is distributed pro rata according to the workweeks each Class Member worked during the Class Period, which tracks the alleged violations: each workweek is an opportunity for the meal, rest, overtime, reimbursement, and wage-statement violations alleged. (Ex. 1, ¶ 3.2.4.) Aggrieved Employees' PAGA payments are distributed pro rata according to PAGA pay periods worked, which tracks PAGA's per-pay-period penalty structure. (Ex. 1, ¶ 3.2.5.1.) No claim form is required, no funds revert to Mercury, and uncashed checks go to the Unclaimed Property Fund in the Class Member's name. (Ex. 1, ¶¶ 3.1, 4.4.3)

7. The Proposed Notice Fairly Apprises the Settlement Class Members of the Terms of the Settlement and of Their Rights

Notice to the class must have a reasonable chance of reaching a substantial percentage of class members (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974) and must fairly apprise

class members of the terms of the proposed compromise and of the options open to them (*Trotsky v. Los Angeles Federal Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151–152; see Cal. Rules of Court, rules 3.766, 3.769(e)–(f)). The notice plan uses each Class Member's last-known address from Mercury's records, updated through the National Change of Address database before mailing, with re-mailing to forwarding addresses or skip-traced addresses for undeliverable notices, a website, a toll-free number, and an extended response period for re-mailed notices. (Ex. 1, ¶¶ 7.4.2–7.4.4, 7.8.1.) The Notice is provided in English with a Spanish translation. (Ex. 1, ¶ 1.11.) The Class Notice explains the claims, the settlement's terms, the estimated individual payments and the data used to calculate them, the amounts requested for fees, costs, service payments, and administration, the PAGA allocation, the releases, and the procedures and deadlines to opt out, object, dispute workweeks, and appear at the final approval hearing. (Ex. 1, Ex. A.) The Court should approve the Notice and the notice plan.

B. The Scope of the Releases Is Appropriate

A class release may extend only to claims that rest on the same factual predicate as the claims in the operative complaint; a release of claims outside the allegations of the complaint is impermissible. (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537–539; *Hesse v. Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590–591.) A PAGA release must likewise be tied to the facts and theories in the notice given to the LWDA. (See *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1005 [confirm pin].) Here, the Class Release is limited to claims "based on the Class Period facts stated in the Operative Complaint," and the PAGA release is limited to claims "based on the PAGA Period facts stated in the Operative Complaint, and/or stated in any PAGA [notice]." (Ex. 1, ¶¶ 5.2, 5.3.) The releases take effect only after the judgment is final and Mercury has fully funded the GSA and the employer-side payroll taxes. (Ex. 1, ¶ 5.) The Agreement preserves claims for wrongful termination, FEHA, unemployment, disability, social security, workers' compensation, and vested benefits and claims arising outside the Class Period. (Ex. 1, ¶ 5.2.) Plaintiffs' general release and Civil Code section 1542 waiver are limited to Plaintiffs; Class Members give no section 1542 waiver. (Ex. 1, ¶¶ 5.1, 5.1.1.) The additional consideration for Plaintiffs' general release is the Class Representative

Service Payment they will request, subject to the Court's approval at final approval. Finally, the Agreement provides that an Aggrieved Employee's PAGA release applies whether or not the employee requests exclusion from the class settlement. (Ex. 1, ¶¶ 5.3, 7.5.4.)

C. The Requested Payments for Fees, Costs, Service Payments, and Administration Are Disclosed and Subject to Final Approval

The Agreement provides that Class Counsel may apply for attorney's fees of up to 33.33% of the GSA (estimated at $663,333.33) and litigation costs of up to $50,000. (Ex. 1, ¶ 3.2.2.) Class Counsel will file their fee and cost motion before the final approval hearing, with the lodestar, hourly rates, and cost documentation the Court requires, and will disclose any fee-sharing arrangement among Class Counsel. (Ex. 1, ¶¶ 3.2.2, 10; Szamet Decl. ¶ 25.) If the Court awards less than the amounts requested, the difference remains in the Net Settlement Amount. (Ex. 1, ¶ 3.2.2.)

Each Class Representative may apply for a Class Representative Service Payment of up to $10,000.00 (total $20,000), in addition to his or her Individual Class Payment and any Individual PAGA Payment, and Mercury will not oppose such a request. (Ex. 1, ¶ 3.2.1.) Plaintiffs will support their application at final approval with evidence of the time and effort they devoted to the case and of any risks they incurred. (See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805–807.) Administration costs will not exceed $15,000.00 absent a showing of good cause and Court approval. (Ex. 1, ¶ 3.2.3.) The Court will determine each of these amounts at the final approval hearing, and the Agreement provides that a reduction in any of them does not give either Party a right to rescind. (Ex. 1, ¶ 10.2.)

D. The PAGA Settlement Should Be Approved

PAGA settlements must be approved by the superior court, and the proposed settlement must be submitted to the LWDA at the same time it is submitted to the Court. (Lab. Code, § 2699, subd. (s)(2).) The Court reviews a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and maximize enforcement of the state's labor laws. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76–77, disapproved on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th

664, 710; see *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) The Court must also "scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests." (*Shaw v. Superior Court* (2022) 78 Cal.App.5th 245, 263.)

The PAGA settlement meets that standard. Mercury will pay $50,000 in civil penalties, $37,500.00 (75%) to the LWDA and $12,500.00 (25%) to the 1,350 estimated Aggrieved Employees, in addition to the class recovery for the same underlying violations. (Ex. 1, ¶¶ 1.34, 3.2.5.) The allocation is approximately 2.5% of the GSA and reflects the substantial risks described in Section V.A.1, including the limitations and exhaustion issues specific to the PAGA claims, the derivative nature of the penalties, the Court's discretion to reduce penalties, and the overlap between the class relief and PAGA penalties. The Individual PAGA Payment is allocated by PAGA pay periods worked and Aggrieved Employees who opt out of the class settlement remain entitled to payment and are bound by the PAGA release. (Ex. 1, ¶¶ 3.2.5.1, 7.5.4.)

E. The Court Should Appoint the Class Representatives, Class Counsel, and Administrator

Plaintiffs are adequate representatives for the reasons stated above. (Section IV.B.3, *supra*.) Kingsley Szamet Employment Lawyers, and Haines Law Group, APC have extensive experience litigating wage-and-hour class and PAGA actions, have diligently prosecuted this Action, and have committed the resources necessary to represent the Class. (Szamet Decl. ¶¶ 54–57; Blakely Decl. ¶¶ 4-7.) Xpand Legal Consulting LLC is an experienced class action administrator with no disclosed conflict of interest with the Parties or counsel, and its "not to exceed" bid is $13,999.00. (Ex. 1, ¶ 7.1; Paul Decl. ¶ 11.)

F. Proposed Schedule

If the Court grants preliminary approval, the Agreement provides the following timeline: Mercury delivers the Class Data within 15 days of the order (¶ 4.2); the Administrator mails the Class Notice within 14 days of receiving the Class Data (¶ 7.4.2); Class Members have 60 days from mailing (74 days if re-mailed) to request exclusion, object, or dispute workweeks (¶¶ 1.43, 7.4.4); the Administrator provides the Exclusion List within 5 days after the response deadline (¶ 7.8.2).

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

Plaintiffs will upload this Motion, the Agreement, and all supporting papers to the LWDA through the online PAGA filing system on the date of filing, and proof of that submission and the LWDA's confirmation will be provided to the Court. (Lab. Code, § 2699, subd. (s)(2), (4); Szamet Decl. ¶ 58, Ex. 2.) The Parties' counsel have also transmitted, or will transmit, the PAGA notices and the operative complaint to the LWDA. (Szamet Decl. ¶¶ 8, 12, 13.)

VII. CONCLUSION

Plaintiffs respectfully request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement Agreement; (2) conditionally certify the Settlement Class for settlement purposes only and appoint Plaintiffs as Class Representatives, Class Counsel, and the Administrator; (3) approve the Class Notice and direct that it be distributed as provided in the Agreement; (4) preliminarily approve the PAGA settlement; and (5) schedule the final approval hearing and related deadlines.

DATED: November 9, 2026

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: 

Kelsey M. Szamet
Attorneys for Plaintiffs and the proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On November 9, 2026, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

FISHER & PHILLIPS LLP
James C. Fessenden
E-Mail: jfessenden@fisherphillips.com
Julia Sherwood
E-Mail: jsherwood@fisherphillips.com
4747 Executive Drive, Suite 1000
San Diego, California 92121
Attorneys for Defendant

ABRAMSON LABOR GROUP
William Zev Abramson
wza@abramsonlabor.com
11846 Ventura Blvd., Suite 100
Studio City, CA 91604
Tel: (213) 493-6300, Fax (213) 382-4083
Attorneys for Plaintiff

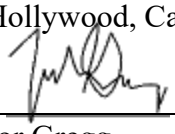
HAINES LAW GROUP, APC
Paul K. Haines, Esq. (SBN 248226)
Sean M. Blakely, Esq. (SBN 264384)
Aden M. Khachadoorian, Esq. (SBN 346908)
2155 Campus Drive., Suite 180
El Segundo, CA 90245

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/315) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL THROUGH CASE ANYWHERE): On interested parties set forth on the attached service list.

[XX] (STATE): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 9, 2026, at West Hollywood, California.



Taylor Gregg