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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

STETSON WHITEHEAD, an individual; on
behalf of himself and all others similarly
situated and the general
public,

Plaintiffs,

vs.

GLS US FREIGHT, INC., a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. STK-UOE-2023-0012910

[Assigned for all purposes to the Hon. Robert
T. Waters, Dept. 11B]

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

Date: April 30, May 2, 6, 7, 8, 2025

Time: 9:00 a.m.

Dept: 11B

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

2 **PLEASE TAKE NOTICE** that on April 30, May 2, 6, 7, or 8, 2025, at 9:00 a.m., or as
3 soon thereafter as the matter may be heard in Department 11B of the above-entitled court,
4 located at the San Joaquin Superior Court, 180 E. Weber Avenue, Stockton, California 95202,
5 Plaintiff Stetson Whitehead (“Plaintiff”) will hereby move the Court for an order granting
6 Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement. In this
7 unopposed motion, Plaintiff seeks the entry of an order to: (1) preliminarily approve the
8 proposed settlement of this class action on behalf of all current and former non-exempt
9 employees of Defendant GLS US Freight, Inc. (“Defendant”), who worked from November 30,
10 2019 through September 1, 2024; (2) certify a class for settlement purposes only and appoint
11 Bartz Law Group, APC and United Employees Law Group, PC as class counsel for settlement
12 purposes only (hereinafter “Class Counsel”); (3) approve the substance, form, and method to
13 provide class-wide notice; (4) direct that notice of the proposed settlement be given to all
14 Settlement Class Members; and (5) schedule a hearing at which time the following will be
15 considered: (i) the request for final approval of the proposed settlement; (ii) the entry of the Final
16 Judgment; and (iii) approval of Class Counsel’s motion for attorneys’ fees and costs, and
17 Plaintiff’s enhancement award.

18 This Motion is based upon this Notice, the attached Memorandum of Points and
19 Authorities, the Declarations of Stetson Whitehead, Aaron Bartz, Walter Haines, and Jodey
20 Lawrence, all documents and records on file in this action, and on such other further oral and
21 documentary evidence as may be given at the hearing on this Motion.

22
23 Dated: April 1, 2025

BARTZ LAW GROUP, APC

24
25 //Aaron Bartz//

26 Aaron A. Bartz

27 Attorneys for Plaintiff STETSON

28 WHITEHEAD and all others similarly
situated

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1 **I. INTRODUCTION**

2 This class action and PAGA settlement is sought on behalf of approximately 1,518
3 current and former non-exempt employees who worked in California for Defendant from
4 November 30, 2019 through September 1, 2024.

5 The case arises out of Plaintiff's allegations that Defendant violated California's wage
6 and hour laws, including failing to pay all wages owed and overtime, failing to authorize and
7 permit meal and rest periods, failing to properly maintain and submit wage statements, waiting
8 time penalties, and failure to reimburse business expenses.

9 After engaging in extensive informal discovery, the parties have agreed to a non-
10 reversionary, all-in common fund settlement of \$1,600,000. The net amount to be paid to class
11 members (after payment of class counsel fees and expenses, settlement administration costs,
12 Private Attorneys General Act ("PAGA") penalties, and Plaintiff's enhancement award), is
13 approximately \$966,667. Each settlement class member's share of the settlement is based on
14 each of their eligible number of workweeks, and shall receive, on average, approximately \$636.
15 So long as the class members do not opt out of the settlement, they will receive a settlement
16 payment. For purposes of this settlement only, the parties agree that the proposed Settlement
17 Class satisfies each of the requirements of Code of Civil Procedure section 382. The settlement
18 is fair, reasonable, and confers a substantial monetary benefit to the entire class. Accordingly,
19 Plaintiff requests that the court grant preliminary approval of the Class Action and PAGA
20 Settlement Agreement and Class Notice ("Settlement Agreement") submitted herewith (see Bartz
21 Decl., Exhibit A), conditionally certify the Settlement Class, approve the proposed Court
22 Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court
23 Approval.

II. PRE-TRIAL PROCEEDINGS AND SETTLEMENT

A. Informal Discovery

Plaintiff filed his Class Action Complaint on November 30, 2023 and thereafter amended his Complaint to include a Private Attorneys General Act (PAGA) claim action on May 29, 2024. (Declaration of Aaron Bartz (“Bartz Decl.”), ¶ 5, and Ex. C). Plaintiff served an initial set of Requests for Production of Documents and Special Interrogatories, to which Defendant served responses, but thereafter the parties agreed to stay formal discovery in order to pursue the possibility of early resolution. As such, the parties thereafter engaged in informal discovery to evaluate the class and PAGA claims. (Bartz Decl., ¶ 6).

To that end, Defendant produced extensive time and payroll records, and Excel spreadsheets with hundreds of thousands of lines of data for the class. (Bartz Decl., ¶ 7). Plaintiff also hired experienced damages expert James Toney, to analyze the payroll and related wage data and to create a damages model for the various claims alleged in the case. Based upon the analysis of the time records and payroll data, Mr. Toney and Class Counsel were able to calculate damage estimates on a class-wide basis. (Bartz Decl., ¶ 8).

The parties did not attend Mediation in this matter until they had sufficient data and documents to evaluate the claims in the case. On January 29, 2025, the parties attended a full-day Mediation before experienced wage and hour mediator, Hon. Carl J. West (Ret.). (Bartz Decl., ¶ 9). After an all-day mediation, the parties reached a settlement, memorialized in a Memorandum of Understanding two days later on January 31, 2025. Thereafter, the parties entered into the Settlement Agreement on March 24, 2025. (Bartz Decl., ¶ 9, Ex. A).

B. The Operative Settlement Terms And Plan of Allocation

The class members entitled to the settlement fund are all non-exempt current and former employees who worked in California for Defendant from November 30, 2019 through September 1, 2024. Based upon current estimates, there are approximately 1,518 class members. (Bartz Decl., ¶ 10).

The settlement fund is all in (except for the employer’s share of payroll taxes, which Defendant shall pay in addition to the \$1,600,000 settlement), there is no claim form

1 requirement, and no residual will revert to Defendant. (Bartz Decl., ¶ 11). Class members will
2 be paid as long as they do not opt out of the settlement. (*Ibid.*) If a Settlement Class Member
3 opts out, their share of the Net Settlement Amount will be allocated to other members of the
4 Settlement Class. (*Ibid.*) In the event a class member does not negotiate (cash) his or her
5 settlement check, the settlement administrator shall distribute the unclaimed funds to the
6 California State Controller's Unclaimed Property Fund. (*Ibid.*)

7 The payment to the Settlement Class Members will be characterized as eighty percent
8 interest and penalties, and twenty percent wages. (Bartz Decl., ¶ 12). The class administrator
9 will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts
10 paid as penalties and interest. (*Ibid.*)

11 Based upon Class Counsel's independent analysis and investigation in this matter, the
12 Settlement Class will be compensated based on each member's respective number of workweeks
13 worked during the Class Period. (Bartz Decl., ¶ 13). Defendant estimates that the total number
14 of workweeks will be no more than 107,105.¹ (*Ibid.*)

15 Based on the settlement terms, there will be an approximate net settlement fund of
16 **\$966,667**. (Bartz Decl., ¶ 14). In exchange for their payment, Class Members will release
17 Defendant and each of its former and present directors, officers, shareholders, owners, attorneys,
18 insurers, predecessors, successors, and assigns from all claims that were alleged, or reasonably
19 could have been alleged, based on the Class Period facts stated in the Action and Plaintiff's
20 PAGA Notice, including claims under the California Labor Code, California Industrial Welfare
21 Commission Wage Orders, regulations, and/or other provisions of law as set forth in more detail
22 in Section 5.3 of the Agreement.. The named Plaintiff will, in addition to releasing claims
23 alleged in the lawsuit, give a general release of all claims pursuant to Civil Code section 1542 as
24 set forth in Section 5.1 and 5.2. (*Ibid.*)

25
26
27
28 ¹ Paragraph 9 of the Settlement Agreement contains an escalator clause.

1 The parties further agree to appoint an experienced claims administrator, Phoenix
2 Settlement Administrators (“Phoenix”) to prepare and send notice to the class, receive and
3 process objections, and prepare and mail settlement checks to Settlement Class Members. (Bartz
4 Decl., ¶ 15). The claims administrator will conduct skip-tracing for any Settlement Class
5 Member whose addresses cannot be found. (Bartz Decl., ¶ 15).

6 The all-in settlement fund will also include all of the attorneys’ fees and costs allowed by
7 this Court. (Bartz Decl., ¶ 16). The attorneys’ fees shall not exceed one-third of the \$1,600,000
8 settlement fund, or \$533,333. (*Ibid.*) Defendant will also pay class counsel’s costs, not to
9 exceed \$25,000, as well as settlement administration costs not to exceed \$15,000, out of the
10 common fund. (*Ibid.*)

11 The PAGA allocation of the settlement is \$50,000, of which \$37,500 (75%) will be
12 distributed to the Labor Workforce and Development Agency (LWDA), with the remaining
13 portion - \$12,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who
14 worked for Defendant at any time from October 3, 2022 through September 1, 2024). (Bartz
15 Decl., ¶ 17).

16 The settlement also includes Plaintiff’s class representative enhancement. Based on
17 Plaintiff’s work in connection with this case, including connecting Class Counsel with other
18 witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting
19 with developing the claims and theories in this case, Plaintiff seeks \$10,000. (Bartz Decl., ¶ 18).

20 **In summary, the settlement fund is allocated as follows:**

- 21 (1) Net settlement fund: \$966,667;
- 22 (2) Attorney’s fees and costs: \$533,333 in attorneys’ fees and up to \$25,000 in costs;
- 23 (3) Settlement administrator expenses not to exceed \$15,000;
- 24 (4) PAGA payment: \$37,500 to the LWDA, and \$12,500 for individual PAGA
25 payments;
- 26 (5) Class representative enhancement of \$10,000.
27 (Bartz Decl., ¶ 19).

III. FACTUAL AND LEGAL BACKGROUND

A. Parties

Plaintiff is a former non-exempt employee working for Defendant as truck driver. Defendant is a California company that operates a freight delivery service.

B. Nature of Plaintiff's Claims

The operative Complaint alleges claims for 1) Failure to Pay All Wages; 2) Waiting Time Penalties; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Proper Rest Periods; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6) Unfair Business Practices; 7) Failure to Reimburse Business Expenses; and 8) Violation of Labor Code § 2699 (PAGA). Plaintiff further alleges that he and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies. (Bartz Decl., ¶ 20).

Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal. App 4th 116, 118 and *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, the following describes the settlement's reasonableness. Plaintiff recognizes the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Plaintiff has determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. Plaintiff estimates that the reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	TOTAL EXPOSURE	SETTLEMENT VALUE
Failure to Pay Wages	\$2,747,540	\$274,754
Meal	\$5,273,022	\$527,302
Rest	\$6,015,334	\$601,533

Waiting time	\$5,618,793	\$561,879
Paystub	\$1,606,450	\$160,645
Reimbursement	\$1,519,608	\$151,960
PAGA	\$11,316,300	\$565,815
TOTAL	\$34,097,047	\$2,843,888

1. Overtime/Off-the-Clock Wage Violations

Labor Code § 510 provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Further, “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay . . . , [and] any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of an employee.”

Labor Code § 1194 states any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

Plaintiff contends that Defendant failed to pay all wages due in numerous respects. *First*, Plaintiff asserts and will testify that Plaintiff and the class were trained and required to do pre-trip vehicle inspections prior to clocking in for their shifts and were not compensated for this off-the-clock time. Off-the-clock time is compensable when an employer knows or should have known the employees are working off-the-clock time. *See Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 585 (2000). Plaintiff asserts that such pre-trip inspection time is unquestionably compensable because Plaintiff and other drivers were instructed by Defendant’s supervisors and managers to arrive before their shifts and perform such inspections to maximize their ability to meet strict delivery schedules which resulted in violations of Labor Code §§ 510 and 1194 and the relevant California Industrial Welfare Commission Orders. (Bartz Decl., ¶ 20.a).

Second, Plaintiff contends that he and other drivers were subject to Defendant’s unlawful 10 hour per day and 50 hour per week overtime policy and were not compensated for shifts

1 longer than 10 hours per day or workweeks longer than 50 hours. Defendant argues that Plaintiff
2 and other drivers were not subject to overtime requirements because they were subject to
3 Department of Transportation regulations and the Motor Carrier Act. However, Plaintiff asserts
4 that simply because the “interstate commerce” requirement may be met for certain purposes,
5 does not mean that interstate commerce is met for the purposes of receiving overtime. *Baird v.*
6 *Wagoner Transp. Co.*, 425 F.2d 407, 410 (6th Cir. 1970). Further, “[i]f the truck does not cross
7 state lines, and if the goods the truck is carrying do not constitute goods in interstate
8 commerce. . . , the driver is not exempt under the federal regulations.” (See DLSE Policies and
9 Interpretations Manual, § 50.8.4.) The Interstate Commerce Commission has held that interstate
10 commerce is not found where, among other things, “the terminal storage is a distribution point or
11 local marketing facility from which specific amounts of the product are sold or allocated,” and
12 “transportation in the furtherance of this distribution within the single State is specifically
13 arranged only after sale or allocation from storage.” See 29 C.F.R. 782.7(b)(2). As such,
14 Plaintiff continues to assert that many drivers, including Plaintiff, who drove local routes
15 between fixed terminals, and only performed intrastate deliveries, should be entitled to overtime
16 and were not compensated for such overtime. (Bartz Decl., ¶ 20.a).

17 Plaintiff and his expert analyzed payroll and time records for the class members and
18 calculated that the total verdict value for this claim is approximately \$2,747,540. Plaintiff and
19 his expert assumed 15 minutes per shift of unpaid hours, based on discussions with the Plaintiff
20 and other class members. Plaintiff’s expert reviewed payroll records for the class, including pay
21 period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as
22 well as fact that the failure to pay wage claims will rest on testimony from Plaintiff and class
23 members, and documented evidence of such violations is scant, Plaintiff placed a reasonable
24 settlement value of the overtime/minimum wage claim at ten percent of the total verdict value, or
25 **\$274,754**. This valuation takes into consideration Class Counsel’s analysis of the law, and
26 evidence produced by the Defendant. (Bartz Decl., ¶ 20.a).

1 **2. Meal and Rest Period Claims**

2 a. Meal period liability and damages

3 Plaintiff contends that Defendant failed to provide Plaintiff and class members with a
4 duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512
5 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior*
6 *Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage
7 Order(s) results in payment by the employer of one additional hour of pay at the employee's
8 regular rate of pay for each workday that the rest or meal period is not provided. (Labor Code §
9 226.7.) Defendant also cannot create "incentives to forego, or otherwise encourage[] the skipping
10 of legally protected breaks." *Brinker, supra*, 53 Cal.4th at 1040. Moreover, when time records
11 show short, missed, and late meal periods, there is a presumption that an employer violated
12 California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78
13 (2021) ("If time records show noncompliant meal periods, then a rebuttable presumption of
14 liability arises.")

15 Plaintiff contends that, although Defendant's meal period policies are facially valid,
16 Defendant's practice of administering these policies is unlawful. **First**, Plaintiff contends that
17 Defendant's time records show substantial violations, which under *Donahue*, create a
18 presumption that Defendant was not in compliance with the law. (Bartz Decl., ¶ 20.b.i).

19 **Second**, Plaintiff asserts that, despite the substantial violations in the time records, there
20 were infrequent meal period premiums paid during the class period and that the dearth of meal
21 period premiums paid demonstrates that Defendant had a pattern and practice of neglecting to
22 pay meal period premiums for meals which were late, short, interrupted, missed, or on-duty.
23 (Bartz Decl., ¶ 20.b.i).

24 Notwithstanding the above, Defendant contends that Plaintiff and class members had the
25 ability and in fact did take meal periods, and that if they did not, it was their own choice, and
26 therefore not actionable. Defendant further contends that that truck drivers are not entitled to
27 meal periods, as the Federal Motor Carrier Safety Administration's (FMCSA) orders preempt
28 California's meal period rules.

1 In response to Defendant's contentions, Plaintiff asserts that the FMCSA's orders apply
2 to interstate commerce, not to purely intrastate travel such as Plaintiff's and other drivers.
3 Further, Plaintiff contends that Defendant has obligated itself within its own policies and
4 procedures to provide meal periods, so Defendant cannot after the fact argue that it does not need
5 to comply with its own policies. (Bartz Decl., ¶ 20.b.i).

6 Class Counsel and their expert calculated the maximum verdict value of the meal break
7 claim to be approximately \$5,273,022. This calculation is based on a 40% violation rate for the
8 class members, and average rate of pay based on the payroll data for the class. Based on
9 discussions with Plaintiff and interviews of other Class Members, and the defenses raised,
10 Plaintiff believes he had a ten percent probability of recovering all of these damages.
11 Accordingly, Plaintiff contends the reasonable exposure of the meal break claim is
12 approximately **\$527,302**. (Bartz Decl., ¶ 20.b.i).

13 b. Rest period liability and damages

14 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
15 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period. The authorized rest period time shall be based on the total hours worked daily
17 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
18 a rest period need not be authorized for employees whose total daily work time is less than three
19 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
20 there shall be no deduction from wages."

21 Section 12(B) of the IWC Wage Order(s) states: "If an employer fails to provide an
22 employee a rest period in accordance with the applicable provisions of this order, the employer
23 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
24 each workday that the rest period is not provided." Moreover, during rest periods, "employees
25 must not only be relieved of work duties, but also be freed from employer control over how they
26 spend their time." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when
27 an employer adopts common policies that prevent employees from taking their rest breaks, it
28 presents a common factual issue by which liability may follow. *See Jaimez v. Daiohs USA, Inc.*,

1 181 Cal.App.4th 1286, 1304 (2010). Indeed, “[t]he wage orders and governing statute do not
2 countenance an employer’s exerting coercion against the taking of, creating incentives to forego,
3 or otherwise encouraging the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at
4 1040.

5 Plaintiff contends that Defendant did not authorize or permit Plaintiff or the class
6 members duty-free rest periods for several reasons. **First**, with respect to Plaintiff and other
7 drivers, Plaintiff asserts that when Plaintiff and other drivers attempted to take rest periods, they
8 were admonished for doing so, as Defendant required Plaintiff and other drivers to carry a tablet
9 with them tracking their location and delivery time. Whenever Plaintiff and other drivers
10 detoured from their expected deliveries, they were immediately contacted on their personal cell
11 phones and questioned about why they were taking a break. As such, Plaintiff and other drivers
12 simply did not take their rest periods, because if they did, they were disciplined. (Bartz Decl., ¶
13 20.b.ii).

14 **Second**, Plaintiff’s damages analysis fairly estimates the same violation rate of 40% as
15 applied to the meal periods. Defendant’s record sampling reflected that no premium payments
16 were attributed to any rest period violations. (Bartz Decl., ¶ 20.b.ii). A complete lack of premium
17 pay “would require perfection or, more likely, a ‘deep, system-wide error’ in failing to pay such
18 premiums.” *In re Tea Station Inv.*, 2021 Bankr. LEXIS 2985, at *22 (C.D. Cal. Oct. 26, 2021). In
19 *Safeway v. Superior Court* (2015) 238 Cal. App. 4th 1138, 1153, the Court counseled against
20 arguments that are based on human perfection.

21 Defendant again argues that the FMCSA orders preempt drivers’ rest period claims. For
22 the same reasons as stated above, Plaintiff believes that the FMCSA orders are inapplicable here.
23 (Bartz Decl., ¶ 20.b.ii).

24 Class Counsel and their expert assumed a 40% violation rate for all shifts by class
25 members of 3.5 hours or more. Based on that assumption, Class Counsel calculated total
26 violations across the class, multiplied by an average rate of pay for the class members. As such,
27 Class Counsel calculated the maximum verdict value of the rest period claims to be
28

1 approximately \$6,015,334. Based on the defenses raised, the difficulty of proving rest period
2 violations on a class wide basis, and the lack of objective evidence proving such violations,
3 Plaintiff believes he had a ten percent chance of recovering all of the rest period damages. As
4 such, Plaintiff believes the reasonable exposure of the rest break claim is approximately
5 **\$601,533**. (Bartz Decl., ¶ 20.b.ii).

6 **3. Waiting Time Penalty**

7 The waiting time penalty claim is purely derivative. Class Counsel analyzed the data to
8 find that there are approximately 987 former employees included in the putative class that would
9 be eligible for the Labor Code §203 penalties. Class Counsel calculated the total verdict value at
10 approximately \$5,618,793. This amount was calculated by multiplying the average daily rate of
11 pay during the statutory period by 30, which is the maximum number of days allowable as
12 waiting time penalties under section 203, and then multiplying that by the total number of former
13 employees. Plaintiff further discounted the waiting time penalty claim based on risk and the fact
14 that waiting time penalties are not awarded if a good faith dispute exists as to whether the wages
15 were owing, including whether in fact non-California based employees would be entitled to
16 waiting time penalties. Further, the class would have the burden of proving a “willful”
17 withholding of wages. Plaintiff considered that under Labor Code §203 there is only a penalty if
18 "an employer willfully fails to pay" all wages due to an employee upon separation. Willfulness
19 does not exist if there is a "good faith dispute," in fact or law that wages were due, even if the
20 employer's reasoning ultimately proves incorrect. *Amaral v. Cintas Corp. No. 2* (2008) 163
21 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. § 13520 ("A 'good faith dispute' that any wages are
22 due occurs when an employer presents a defense, based in law or fact which, if successful, would
23 preclude any recover on the part of the employee. The fact that a defense is ultimately
24 unsuccessful will not preclude a finding that a good faith dispute did exist.")

25 Once Plaintiff determined the maximum reasonable exposure of the claim, Plaintiff
26 placed a settlement value of **\$561,879** or approximately ten percent of the reasonable exposure
27 value, based upon the above discounts applied to the reasonable value of the claim. (Bartz Decl.,
28 ¶ 20.c).

1 **4. Paystub**

2 As to the paystub penalty, which is derivative of the other claims identified above, Class
3 Counsel arrived at a maximum reasonable exposure of this claim of approximately \$1,606,450.
4 This figure was arrived at by assuming that each wage statement that was provided to the class
5 members violated LC §226, and multiplying the number of pay periods during the statutory
6 period by \$50 for initial violations, and \$100 for subsequent violations.

7 Defendant argues that, even assuming there are any violations, which they deny, the fact
8 that derivative violations were minor and that the Defendant had presented evidence of a good
9 faith dispute as to any violation. *Hurst v. Buczek Enters., LLC* (N.D. Cal. 2012) 870 F.Supp.2d
10 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its
11 defense); *Harris v. Vector Mktg. Corp.* (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the
12 "employer did not knowingly and intentionally fail to provide itemized wage statements" where
13 there was a "good faith dispute").

14 Based on the raised defenses, as well as the risk of certification and related risks of
15 proving all violations, Plaintiff has placed a reasonable settlement value of **\$160,645** or ten
16 percent of the reasonable exposure of the pay stub claim. (Bartz Decl., ¶ 20.d).

17 **5. Reimbursement Claim**

18 California Labor Code section 2802(a) provides:

19 An employer shall indemnify his or her employee for all necessary expenditures
20 or losses incurred by the employee in direct consequence of the discharge of his
21 or her duties, or of his or her obedience to the directions of the employer, even
22 though unlawful, unless the employee, at the time of obeying the directions,
23 believed them to be unlawful.

24 Plaintiff contends that that he and other class members also used their personal cell
25 phones to review their shift schedules and communicate with managers and supervisors about
26 work business, without reimbursement. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal.
27

1 App. 4th 1137, 1144 (2014) (finding that reimbursement for personal cell phone usage required
2 when mandatory for performing one's job).

3 In *Cochran*, the court stated: "The threshold question in this case is this: Does an
4 employer always have to reimburse an employee for the reasonable expense of the mandatory
5 use of a personal cell phone, or is the reimbursement obligation limited to the situation in which
6 the employee incurred an extra expense that he or she would not have otherwise incurred absent
7 the job? The answer is that reimbursement is always required. Otherwise, the employer would
8 receive a windfall because it would be passing its operating expenses on to the employee. Thus,
9 to be in compliance with section 2802, the employer must pay some reasonable percentage of the
10 employee's cell phone bill." *Id.* at 1144.

11 Defendant contends that it paid for all reasonable and necessary expenses incurred by
12 Plaintiff and class members, and that the reimbursement claim has little to no value.

13 Plaintiff contends that this claim is valued at \$1,519,608 based upon expenses per month
14 calculations throughout the class period. Given the fact that there are individualized issues in
15 proving reimbursement violations and damages, Plaintiff believes this claim's reasonable value
16 is **\$151,960**, or ten percent of the total value. (Bartz Decl., ¶ 20.e).

17 **6. PAGA**

18 Plaintiff contends that PAGA penalties are owed based on the numerous alleged Labor
19 Code violations identified above. Once a PAGA violation is found, a court must award civil
20 penalties. *See Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1211-1213.

21 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based
22 on the facts and circumstances of the particular case, to do otherwise would result in an award
23 that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

24 Significantly, moreover, because it is an open question regarding the Defendant's
25 liability, there is a very real possibility that a court would substantially reduce the penalties, even
26 if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal.
27 2011) (reducing penalties from \$2.8 million to \$500,000 based on wage statement violations
28

because to assess full penalties would be unjust and arbitrary); Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Class Counsel and their expert calculated the reasonable PAGA penalties to be valued at \$11,316,300, which includes the stacking of penalties for numerous violations, as set forth above. Based on the uncertainty of recovery on Plaintiff's claims, Plaintiff believes the PAGA claim's reasonable value is five percent of the total value, or approximately **\$565,815**. (Bartz Decl., ¶ 20.f).

7. Total Damage Exposure²

Plaintiff believes that the \$1,600,000 settlement achieved in this case is very good for the class members. Based upon a reasonable exposure value of \$2,843,888, the settlement represents approximately 56% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the risks of going to trial, Class Counsel believe this settlement is a good result for all of the class members. (Bartz Decl., ¶ 20.g).

IV. CONDITIONAL CERTIFICATION OF THE CLASS

A. Class Certification Is Appropriate in this Case

The proposed settlement seeks conditional certification of the Class. The Class is defined as follows:

All non-exempt current and former employees who worked in California for Defendant during the Class Period (November 30, 2019 through September 1, 2024). (Bartz Decl., ¶ 21).

The certification of the Class is essential to the settlement. California public policy favors the use of the class action device. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 469. CCP §382 authorizes class action suits in California when "the question is one of the common or general interest, of many persons, or when the parties are numerous, and it is

² The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

1 impracticable to bring them all before the courts, one or more may sue or defend for the benefit
2 of all.” To obtain certification, a party must establish the existence of both an ascertainable class
3 and a well-defined community of interest among class members. *Linder v. Thrifty Oil Co.*
4 (2000) 23 Cal. 4th 429, 435. The “community of interest” requirement depends on three factors:
5 (1) whether common issues of law or fact predominate; (2) whether the class representatives
6 have claims that are typical of the class; and (3) whether the class representatives will
7 adequately represent the class. *Richmond, supra*, 29 Cal.3d at 470. Because the policy of
8 favoring use of class actions is so strong, any doubts as to the appropriateness of class treatment
9 must be resolved in favor of certification, subject to later modification. *Richmond, supra*, 29
10 Cal.3d at 473-75. Except in extraordinary circumstances not present here, the trial court does
11 not weigh the merits of the claims in ruling on a motion for class certification. *Linder, supra*, 23
12 Cal.4th at 443. The seminal California Supreme Court decision of *Sav-On Drug Stores, Inc. v.*
13 *Superior Court* (2004) 34 Cal.4th 319, 326 has reemphasized the procedural nature of the
14 certification motion.

15 **B. The Proposed Class Is Ascertainable and Numerous**

16 For a class to exist, the class description must be sufficiently definite so that it is
17 administratively feasible for the court to determine whether a particular individual is a member
18 of the proposed Class by reference to objective criteria. The class definition, as set forth in the
19 parties’ Settlement Agreement and reiterated above, is sufficiently specific to enable potential
20 Class Members, and the court, to readily determine the parameters of the class. (*See*
21 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617.)

22 Here, there are approximately 1,518 Class Members, all of whom have been identified by
23 Defendant’s employment and payroll records (*See* Bartz Decl., ¶¶ 10, 21). This is sufficient to
24 satisfy numerosity requirements. As a general matter, courts have found that numerosity is
25 satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21.
26 *See Ansari v. New York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998) (citing a thorough review of
27 cases in 5 MOORE’S FEDERAL PRACTICE §23.22[3][a] (Matthew Bender 3d ed. 1999)). The
28 Ninth Circuit has not offered a precise numerical standard; other District Courts have, however,

1 enacted presumptions that the numerosity requirement is satisfied by a showing of 25-30
2 members. *See, e.g., In re Kirschner Med. Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md.
3 1991); *EEOC v. Printing Indus., Inc.*, 92 F.R.D. 51, 53 (D.D.C. 1981), *Slaven v. BP America,*
4 *Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

5 **C. Common Issues of Law or Fact Predominate**

6 Common questions of law and fact predominate here for purposes of settlement, as the
7 main issues involve the legality of Defendant's policies regarding the failure to pay all wages,
8 failure to provide all legally compliant off duty and uninterrupted meal periods, the failure to
9 provide all legally compliant off duty and uninterrupted paid rest periods, failure to timely
10 furnish accurate itemized wage statements, and failure to timely pay all former employees all
11 wages owed, and failure to reimburse for business expenses. (*See Bartz Decl.*, ¶ 23). Whether
12 each member of the Class might be required to ultimately justify an individual claim does not
13 preclude maintenance of a class action (*see, e.g., Collins v. Rocha* (1972) 7 Cal.3d 232, 238).
14 Plaintiff contends that these are all pay policy questions that are uniform and can be proven by
15 common objective evidence. The evidence to support these claims consists of pay policies,
16 payroll records, time records and pay stubs given to all Class Members. (*See Bartz Decl.*, ¶¶ 7,
17 23). In assessing whether common issues predominate over individual issues, it is not necessary
18 that the Class Members' claims or their circumstances be identical. *L.A. Fire & Police Protective*
19 *League* (1972) 23 Cal.App.3d 67, 74 (in an overtime action, the fact that there were 19 different
20 subgroups of employees did not preclude finding that common issues predominated.) California
21 law specifically authorizes class actions when a defendant's corporate policies result in injury to
22 a group of plaintiffs. In *Stephens v. Montgomery Ward & Co., Inc.* (1987) 193 Cal.App.3d 411,
23 421, the court held that testimony from the class representative, coupled with proof of company-
24 wide policies and practices, was sufficient to prove that common issues affecting the class of
25 employees as a whole predominated over individual issues. *See Sav-On, supra*, 34 Cal.4th 319.

26 **D. Plaintiff's Claims Are Typical of the Class Claims**

27 Typicality simply means that the representative's claims be similar to those of Class
28 Members. The interests of the class representatives need not be identical to those of other Class

Members; the class representatives must simply be similarly situated. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46. Here, the class representative worked for Defendant in California as an hourly, non-exempt employee who worked during the Class Period and worked pursuant to Defendant's uniform pay, meal, and rest policies applicable to all hourly employees working within California (*See* Bartz Decl., ¶¶ 10, 25).

E. Adequacy of Representation

Adequacy of representation depends on whether Plaintiff class representative and Plaintiff's attorneys are qualified to conduct the proposed litigation and whether the representative Plaintiff's interests are antagonistic to those of the Class. In this case, the representative Plaintiff has the same injuries and damages similar to those of the Class he seeks to represent, he has agreed to act as class representatives and in the best interests of the class, and Plaintiff has no claims that are antagonistic to the Class. (*See* Whitehead Decl., ¶¶ 3-10). Plaintiff's counsel are also very experienced and qualified, and have been approved to act as class counsel in numerous class and representative actions. (*See* Bartz Decl., ¶¶ 26-28; Declaration of Walter Haines ("Haines Decl."), ¶¶ 3-6).

V. THE CLASS ACTION SETTLEMENT MEETS THE REQUIREMENTS FOR PRELIMINARY APPROVAL

When a proposed class action settlement is reached, the settlement must be submitted to the court for approval. H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at § 11.41, p. 11-87. Review of a proposed class action settlement involves two hearings. First, the settlement must be preliminarily approved by the court. Second, a final settlement approval hearing is set, where evidence and argument are submitted concerning the fairness, adequacy, and reasonableness of the settlement, and class members may be heard regarding the settlement. *See* Manual for Complex Litigation, Fourth §§ 21.632-21.633 (2004).

The question presented on a motion for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval."

1 *Manual for Complex Litigation*, Fourth, § 21.632 at 321; *Gautreaux v. Pierce*, 690 F.2d 616, 621
2 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that “the
3 proposed settlement...may be submitted to members of the prospective Class for their acceptance
4 or rejection.” *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*
5 323 F.Supp. 364, 372 (E.D. Pa. 1970). The court must determine whether the settlement is fair,
6 adequate, and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
7 *citing Officers for Justice v. Civil Service Com’n, etc.*, 688 F.2d 615, 625 (9th Cir. 1982) and
8 Fed. Rules Civ. Proc., Rule 23(e). There is an initial presumption of fairness when a proposed
9 settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court
10 approval. *Newberg, supra*, §11.41, p. 11-88. However, the ultimate question of whether the
11 proposed settlement is fair, reasonable and adequate is made after notice of the settlement is
12 given to the class members and a final settlement hearing is held by the court.

13 **A. The Role Of The Court In Preliminary Approval Of A Class Action**
14 **Settlement**

15 The approval of a proposed settlement of a class action suit is a matter within the broad
16 discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235
17 (2001); *Dunk*, 48 Cal. App. 4th at 1801. Preliminary approval does not require the trial court to
18 answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate.
19 That determination is made only after notice of the settlement has been given to the class
20 members and after they have been given an opportunity to voice their views of the settlement or
21 to be excluded from the settlement. *See, e.g.*, J. Moore, *Moore’s Federal Practice* §§ 23.80-23.85
22 (2003). With regard to class action settlements, the opinions of counsel should be given
23 considerable weight both because of counsel’s familiarity with this litigation and previous
24 experience with cases such as these. *See Officers for Justice, supra*, 688 F.2d at 625.

25 **B. Factors To Consider In Granting Preliminary Approval**

26 A number of factors are to be considered in evaluating a settlement for purposes of
27 preliminary approval. No one factor should be determinative, but rather all factors should be
28 considered. These criteria have been summarized as follows:

1 If the proposed settlement is the product of serious, informed, noncollusive negotiations,
2 has no obvious deficiencies, does not improperly grant preferential treatment to class
3 representatives or segments of the class, and falls within the range of possible approval, the court
4 should direct notice to be given to the class members of a formal fairness hearing, at which
5 evidence may be presented in support of and in opposition to the settlement.
6 *Manual of Complex Litigation*, Second §30.44, at 229 (1985). This settlement meets all of
7 these criteria.

8 **1. The settlement is the product of serious, informed, and**
9 **non-collusive negotiations**

10 This settlement is the result of arms-length and hard-fought negotiations. Defendant has
11 denied and continues to deny all of the claims and contentions alleged in this case, and argues
12 that California law does not apply to the facts of this case. Nonetheless, Defendant has agreed to
13 settle this case in the manner and upon the terms and conditions set forth in the Settlement
14 Agreement in order to avoid the expense, inconvenience, and burden of further legal
15 proceedings, and the uncertainties of trial and appeals.

16 Plaintiff and Class Counsel recognize the expense of continuing to litigate and trying this
17 case against Defendant through possible appeals which could take several years. Class Counsel
18 are also mindful of and recognize the inherent problems of proof under, and alleged defenses to,
19 the claims asserted in the case. Based upon their evaluation, Plaintiff and Class Counsel have
20 determined that the settlement set forth in the Settlement Agreement is in the best interest of the
21 Class Members.

22 Here, the litigation has been adversarial and displayed capable and experienced advocacy
23 on both sides. “There is likewise every reason to conclude that settlement negotiations were
24 vigorously conducted at arm’s length and without any suggestion of undue influence.” *In re*
25 *Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

1 **2. The settlement has no “obvious deficiencies” and falls**
2 **within the range for approval**

3 The proposed settlement herein also has “no obvious deficiencies” and is well within the
4 range of permissible compromise. This settlement, which represents approximately 56% of the
5 reasonable settlement exposure faced by Defendant, is entitled to preliminary approval. *See,*
6 *e.g., Glass v. UBS Fin. Servs.*, 2007 WL 221862, *4 (N.D. Cal. January 26, 2007) (approving
7 settlement of unpaid overtime wages where the settlement amount constituted approximately 25
8 to 35% of the estimated actual loss to the class). Each Settlement Class Member will receive the
9 same opportunity to participate in and receive payment. Clearly, the goal of this litigation, to
10 seek redress for the Class, has been met.

11 Where both sides face significant uncertainty, the attendant risks favor settlement.
12 *Hanlon v. Chrysler Com.*, 150 F.3D 1011, 1026 (9th Cir. 1998). Here, Defendant has
13 maintained that its wage and hour policies comply with California law, and believes it would be
14 successful if it continued to litigate this action. Notwithstanding the risk of continuing to litigate
15 this case, after vigorous, arms-length negotiations, the parties reached a proposed settlement of
16 \$1,600,000, where each member of the Class will receive payment unless the class member opts
17 out of the settlement.

18 **3. No preferential treatment is given to the class representatives**
19 **or other members of the class**

20 All of the class members will share in the settlement according to the number of
21 workweeks worked during their employment with Defendant. The compensation formula is
22 objective, justified, and reasonable in this case, and does not improperly grant preferential
23 treatment to any class member.

24 **4. The parties engaged in adequate discovery prior to settlement**

25 The agreement to settle did not occur until Class Counsel possessed sufficient
26 information to make an informed judgment regarding the likelihood of success on the merits and
27 the results that could be obtained through further litigation. Class Counsel obtained substantial
28

informal discovery from Defendant, including personnel, and pay data for Plaintiff, and Excel spreadsheets and payroll records for a statistically meaningful sampling of the class.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members. There can be no doubt that counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation.

5. The class representative's service payment is reasonable

The Plaintiff class representative has spent numerous hours working with Class Counsel to uncover the alleged wage violations to achieve the result herein. But for the class representative, this settlement would not have been reached. The proposed class representative service award payment for Plaintiff is intended to recognize his initiative, risk, and efforts on behalf of the Settlement Class. Courts routinely approve class representative service payments, also known as incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for efforts in bringing the case); *Manual for Complex Litigation, Fourth*, § 21.62, fn. 971 (noting that such awards “may sometimes be warranted for time spent meeting with Class Members, monitoring cases, or responding to discovery”).

6. Plaintiff's counsel's attorney's fees and costs are reasonable

California courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to class members by the

1 settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Vincent v. Hughes Air West, Inc.*, 557
2 F.2d 759, 769 (9th Cir. 1977). The purpose of this equitable doctrine is to avoid unjust
3 enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries
4 so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F.2d at 769.

5 Class Counsel has extensive experience in employment litigation and has successfully
6 handled wage and hour class actions. Class Counsel seeks up to 33.33% of the Settlement
7 Amount for attorney’s fees, and Class Counsel will submit detailed billing with the final
8 approval motion.

9 Moreover, Class Counsel seeks costs not to exceed \$25,000, plus class administrator
10 expenses not to exceed \$15,000, which Defendant has agreed to pay out of the settlement
11 amount. All such costs, as well as the class administrator’s expenses to oversee the class notice
12 procedure and remit the settlement fund to the class, are reasonably necessary in prosecuting this
13 action.

14 **VI. THE PROPOSED CLASS NOTICE IS FAIR AND APPROPRIATE**

15 The method and content of a Class Notice to class members should be designed to fairly
16 apprise them of the terms of the proposed settlement and options available to them. *See*
17 *Philadelphia Housing Authority v. American Radiators & Standard Sanitary Corp.*, 323 F. Supp.
18 364, 378 (E.D. Pa. 1970). An appropriate notice is one which has a reasonable chance of
19 reaching a substantial percentage of the class members. *See Cartt v. Superior Court*, 50 Cal.
20 App. 3d 960, 974 (1975).

21 The proposed Notice of Class Settlement is fair and reasonable in this case. It describes
22 the nature of the lawsuit, the Settlement Class, the settlement amount, the proposed plan of
23 allocation of the settlement amount, and the attorneys’ fees that Class Counsel may receive. The
24 proposed notice also describes the Settlement Agreement in sufficient detail to allow the
25 Settlement Class Members to make an informed choice to accept or reject it. The proposed
26 Notice also contains information on opting out of the Class, objecting to the settlement, and sets
27 forth the final approval hearing date and time.

Moreover, the parties propose that the Class Notice be mailed by the Settlement Administrator to all Class members at the last known address maintained by Defendant, and updated by the Settlement Administrator, if necessary, after accessing the National Change of Address database. In the event the Class Notice is returned as undeliverable, the Settlement Administrator will perform a skip-trace procedure, and if such procedure reveals a new address, the Settlement Administrator will re-mail the Notice within five business days.

In summary, the proposed notice here describes the proposed settlement with enough specificity to permit class members to make an informed decision whether to participate in the settlement.

VII. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court preliminarily approve the Settlement, approve the Class Notice, and set the date and time for the Final Approval Hearing.

Dated: April 1, 2025

BARTZ LAW GROUP, APC

//Aaron Bartz//

Aaron A. Bartz
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WHITEHEAD and all others similarly
situated