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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF RIVERSIDE**

10 RANDALL BACHMAN, an individual and on
11 behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 GEODIS LOGISTICS LLC, a Tennessee
15 limited liability company; and DOES 1 through
16 50,

17 Defendants.

Case No.: CVRI2400956

[Assigned for All Purposes to:
Hon. Harold W. Hopp, Dept. 1]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Filed Concurrently with Notice of Filing
Class and PAGA Action Settlement
Agreement, Declarations in Support Thereof,
and [Proposed] Order]

DATE: January 15, 2025

TIME: 8:30 a.m.

DEPT: 1

Reservation No.: 955782874429

Action Filed: February 22, 2024

Trial Date: None Set

1 TO THE HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE THAT on January 15, 2025 at 8:30 a.m. in Department 1 of the
3 Superior Court of the State of California for the County of Riverside, Historic Courthouse, located
4 at 4050 Main Street, Riverside, CA 92501, before the Honorable Harold W. Hopp, Judge presiding,
5 Plaintiff RANDALL BACHMAN (“Plaintiff” or “Class Representative”) will and hereby does
6 move the Court for an Order:

7 1. Preliminarily approving the Class and PAGA Action Settlement Agreement
8 (“Agreement”) between Class Representative and Defendant GEODIS LOGISTICS LLC
9 (“Defendant”) and the settlement fund in the amount of Four Hundred Thousand Dollars and Zero
10 Cents (\$400,000.00) (“Gross Settlement Amount”), which is to be distributed as follows: out of the
11 Gross Settlement Amount, (a) an estimated minimum of \$184,270.67 to be paid to the Participating
12 Class Members; (b) up to \$7,500 to be paid to the Class Representative Service Payment for his
13 services to the Class; (c) up to a total of \$133,333.33 to be paid to Class Counsel for attorneys’ fees
14 and reimbursement of actual costs up to a maximum of \$25,000; (d) the PAGA Payment of
15 \$40,000, 75% of which, or \$30,000 will be paid to the Labor Workforce Development Agency (the
16 “LWDA”) and 25% of which, or \$10,000 will be paid to Aggrieved Employees; and (e) the
17 Settlement Administrator to be paid for its fees and costs relating to the claims administration
18 process in the amount of \$19,896;

19 2. Finding on a preliminary basis that the Settlement appears to be within the range of
20 reasonableness of a settlement, and that the Class Representative Service Payment, Class Counsel
21 fees and costs, the Settlement Administrator fees, and the allocation of payments to Participating
22 Class Members, could ultimately be given final approval by this Court;

23 3. Approving the Notice of Proposed Settlement or Class Notice packet (“Class
24 Notice”) to be sent to Class Members, that is attached as Exhibits A to C to the Agreement;

25 4. Appointing Simpluris, Inc. as the Settlement Administrator; and

26 5. Setting the matter for a Final Fairness and Final Approval hearing.

27 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
28 provides for court approval of the settlement of a purported class action and allows the Court to

1 preliminarily certify a class for settlement purposes. The basis for this Motion, filed without any
2 opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the
3 procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to
4 participate in, opt out of, or object to the settlement.

5 This Motion will be based on the Memorandum of Points and Authorities included herein,
6 the Agreement concurrently filed herewith, and the supporting Declarations of William C. Sung,
7 Tiffany L. Luu, Randall Bachman, Denise Islas on behalf of Simpluris, Inc., and Timothy M.
8 Rusche, and upon the oral arguments of counsel (should there be any) and on the complete records
9 and file herein.

10
11 DATED: December 12, 2024

JUSTICE FOR WORKERS, P.C.

12
13 By: 

14 William C. Sung

15 Tiffany L. Luu

16 Attorneys for Plaintiff RANDALL BACHMAN
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1 The Parties agreed to engage in private mediation with well-respected mediator, Barry
2 Appell, Esq., and engaged informal discovery and document exchange. (*Id.* at ¶ 4.) On September
3 10, 2024, the Parties attended mediation with Mr. Appell and successfully reached a resolution of
4 this Action on a class action and PAGA representative basis. (*Ibid.*) Pursuant to the Parties’
5 Settlement, on October 22, 2024, Plaintiff filed a second amended PAGA letter with the LWDA and
6 gave notice to Defendant. (*Id.* at ¶ 5, Ex. 4.) Then on December 3, 2024, Plaintiff filed the operative
7 First Amended Class and Representative Action Complaint (“FAC”), adding class action claims for
8 the same claims and theories as his PAGA action: (1) Minimum Wage Violations; (2) Overtime
9 Wage Violations; (3) Meal Period Violations; (4) Rest Period Violations; (5) Wage Statement
10 Penalties; (6) Waiting Time Penalties; (7) Failure to Reimburse Business Expenses; (8) Unfair
11 Competition; and (9) Civil Penalties Under PAGA. (*Id.* at ¶ 6, Ex. 5.)

12 **III. THE PARTIES’ SETTLEMENT NEGOTIATIONS**

13 Prior to the mediation, the Parties discussed the basis of Plaintiff’s legal claims under the
14 asserted Labor Code sections and the legal authorities for and against Plaintiff’s theories of liability.
15 (*Id.* at ¶ 7.) The Parties also engaged in informal discovery, where Defendant provided Plaintiff
16 with data which included (1) a list with Class Members’ employee numbers, dates of employment,
17 job title, location worked, and pay rate; (2) an approximate 15% sampling of Class Members’ time
18 and payroll records exported onto Excel, totaling over 350 Class Members; (3) amount of meal and
19 rest period premiums paid; (4) Defendant’s employee handbooks and relevant policies and
20 procedures in effect during the Class Period; and (5) Plaintiff’s personnel records. (*Ibid.*)

21 Plaintiff engaged an expert data analyst to conduct an analysis of the sampling records and
22 Class Counsel analyzed and investigated the facts and law relevant to the Plaintiff’s claims, the
23 Parties outlined their respective positions in mediation briefs for the mediator. (*Id.* at ¶ 8.) Based on
24 data provided by Defendant, Class Counsel also calculated the maximum exposure under the Labor
25 Code in preparation for mediation. (*Id.* at ¶10.)

26 The Parties participated in a full-day mediation with Mr. Appell. (*Id.* at ¶ 4.) During the
27 mediation, the Parties debated the strengths and weaknesses of Plaintiff’s claims and Defendant’s
28 defenses thereto and the scope of employees whom Plaintiff could represent even if Plaintiff’s legal

1 claims had merit. (*Id.*) After a full day of mediation, the Parties resolved this Action. (*Id.* at ¶ 4.)
2 The Parties subsequently memorialized all formal terms in a Class and PAGA Action Settlement
3 Agreement (the “Agreement”), attached as Exhibit 1 to the Notice of Filing of Class and PAGA
4 Action Settlement Agreement. (*Id.*)

5 **IV. DISCUSSION**

6 Any settlement of class litigation must be reviewed and approved by the Court. This is done
7 in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice
8 has been distributed to the class members for their comment or objections. The Manual for
9 Complex Litigation (Third), § 30.41 states:

10 Approval of class action settlements involves a two-step process. First, counsel
11 submits the proposed terms of settlement and the court makes a preliminary fairness
12 evaluation. If the preliminary evaluation of the proposed settlement does not
13 disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly
14 preferential treatment of class representatives or of segments of the class, or
excessive compensation for attorneys, and appears to fall within the range of
possible approval, the court should direct that notice . . . be given to the class
members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.

15 Thus, the preliminary approval by the trial court is simply a conditional finding that the
16 settlement appears to be within the range of acceptable settlements. As Professor Newberg
17 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
18 concerning a tentative settlement proposal may vary. The court may find that the settlement
19 proposal contains some merit, is within the range of reasonableness required for a settlement offer,
20 or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4
Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

21 The procedures for the parties’ submission of a proposed settlement for preliminary
22 approval by the court also are discussed in 4 Newberg on Class Actions:

23 When the parties to an action reach a monetary settlement, they will usually prepare
24 and execute a joint stipulation of settlement, which is submitted to the court for
25 preliminary approval. The stipulation should set forth the central terms of the
agreement, including but not limited to, the amount of settlement, form of payment,
manner of determining the effective date of settlement and any recapture clause.

26 (*Id.* at § 11.24.)

27 Here, the Parties have reached such an agreement and have submitted to this Court in
28 connection with this Motion a copy of the Agreement fully setting forth the agreement reached

1 among the Parties. The Agreement sets forth all terms of the agreement reached by the Parties,
2 which complies with the Court’s Class Action Case Management Order (“CMO”).

3 **A. PROPOSED CLASS - CMO (G)(3)(a)(i)**

4 The current settlement is being settled on behalf of:

5 “All individuals whom Defendant employed in California as nonexempt employees at
6 any time during the Class Period (defined as January 1, 2022 to October 10, 2024).”

7 (Agreement ¶¶ I.C., I.H.) The number of Class Members is estimated at 2,446 individuals and the
8 number of PAGA Aggrieved Employees is estimated at 1,829 individuals. (Sung Decl. ¶ 9.)

9 **B. ESTIMATE OF THE TOTAL AMOUNT OF DAMAGES, PENALTIES OR OTHER**
10 **RELIEF THAT THE CLASS WOULD BE AWARDED - CMO (G)(3)(a)(ii)**

11 Based on the data provided, Plaintiff believes that the class could have obtained damages of
12 approximately \$6,500,360.64 plus PAGA penalties. (Sung Decl. ¶ 10.) Specifically, Plaintiff
13 estimates the following damages for each of the causes of action as follows:

14 **1. Unpaid Wages Due to Regular Rate Violations**

15 Plaintiff alleges that Defendant failed to incorporate non-discretionary incentive
16 compensation into the regular rate of pay for overtime purposes. (FAC, ¶ 11.) “Regular rate of pay,
17 which can change from pay period to pay period, includes adjustments to the straight time rate,
18 reflecting, among other things, shift differentials and the per-hour value of any nonhourly
19 compensation the employee has earned.” *Alvarado v. Dart Container Corp. of California* (2018) 4
20 Cal.5th 542, 554. Here, Defendant paid Class Members various types of incentive compensation,
21 including hourly shift differentials and other bonuses coded in the payroll records as PTO Award,
22 CA Instep 90 Days, CA Instep Annual, Bonus Spot, Bonus Stay, Pay for Performance, Premium
23 Peak, Star Award, Gift Card, and Work Survey. (Sung Decl., ¶ 10.a.)

24 In Class Counsel’s investigation and the expert’s analysis of Defendant’s policies and
25 records leading up to the Settlement, Class Counsel concluded that Defendant properly factored all
26 but one type of incentive compensation into the regular rate (e.g., shift differentials, Instep 90 Days,
27 CA Instep Annual, *etc.*) or the bonus was non-discretionary in nature and need not be factored into
28 the regular rate (e.g., Bonus Spot and Gift Card). (*Ibid.*) Defendant, however, failed to factor PTO

1 Awards—Class Members who have perfect attendance for 3 consecutive calendar receive 8 hours of
2 paid time off (“PTO”)—into the regular rate of pay. (*Ibid.*) Based on analysis of the sampling time
3 and payroll records and extrapolated to the full Class, Class Counsel estimate Defendant’s
4 maximum exposure to the Class for underpaid overtime due to PTO Awards not being factored into
5 the regular rate to be approximately \$52,802.49.

6 **2. Unpaid Wages Due to Off-the-Clock Work**

7 Plaintiff alleges that he and Class Members sometimes worked off the clock up to five
8 minutes waiting in line to clock in and out. (FAC, ¶ 11; *see Troester v. Starbucks Corp.* (2018) 5
9 Cal.5th 829, 840, 848 [defining hours worked as “the time during which an employee is subject to
10 the control of an employer” and holding that “[t]he relevant statutes and wage order do not allow
11 employers to require employees to routinely work for minutes off the clock without
12 compensation”]; *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1056-1057 [holding “that plaintiffs are
13 subject to Apple's control while awaiting, and during, Apple's exit searches” and therefore “must
14 compensate those employees to whom the policy applies for the time spent waiting for and
15 undergoing these searches”].) Here, any instances of off-the-clock work would not be reflected in
16 the records. (Sung Decl., ¶ 10.b.) Estimating that Class Members worked on average 15 minutes off
17 the clock per week, Defendant’s maximum exposure to the Class for underpayment of wages,
18 including overtime, to be approximately \$1,275,654.22. (*Ibid.*)

19 **3. Meal and Rest Period Premiums**

20 Plaintiff alleges that he and Class Members did not receive all of their meal periods and rest
21 periods and meal period premiums were not paid at the regular rate of compensation because
22 Defendant failed to factor incentive compensation into the regular rate. (FAC, ¶¶ 12-13; *see Ferra*
23 *v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 863 [holding meal and rest period
24 premiums must be paid at the regular rate].) Here, in analyzing the sampling time and payroll
25 records, after accounting for meal period premiums paid, Plaintiff’s expert found 0.70% of shifts
26 had a meal period violation without payment of premiums. (Sung Decl., ¶ 10.c.) Extrapolating
27 potential damages to the full Class, Class Counsel estimate Defendant’s maximum exposure to the
28 Class for unpaid meal period premiums to be approximately \$119,061.06. (*Ibid.*) As to *Ferra*

1 regular rate violations based on PTO Awards, based on analysis of the payroll records, Class
2 Counsel estimates Defendant's maximum exposure to the Class for underpaid meal period
3 premiums to be approximately \$3,555.08. (*Ibid.*) As to rest periods, any instances of rest period
4 violations would not be reflected in the records. (*Ibid.*) Given Defendant's meal period compliance
5 rate, and estimating that Class Members had a 5% rest period non-compliance rate (i.e., one
6 violation every two weeks), Defendant's maximum exposure to the Class for unpaid rest period
7 premiums is \$170,087.23. (*Ibid.*)

8 **4. Statutory Penalties for Wage Statement and Waiting Time Violations**

9 Plaintiff alleges that Defendant failed to provide compliant wage statements and pay all
10 wages due upon separation of employment as a result of unpaid wages and meal and rest period
11 premiums. (FAC at ¶ 15.) However, in 2024, the California Supreme Court in *Naranjo v. Spectrum*
12 *Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065, held that an employer's good-faith defenses
13 precludes a "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding
14 under Labor Code § 226(e) for the imposition of statutory penalties. Accordingly, Plaintiff limits his
15 exposure analysis to regular rate claims for underpaid overtime, meal period premiums, and paid
16 sick leave arising out of PTO Awards, which Class Counsel believes could realistically survive
17 Defendant's *Naranjo* defense. (Sung Decl., ¶ 10.d.)

18 Statutory penalty wage statement violations is \$50 per pay period in which there is a
19 violation. (Lab. Code ¶ 226(e).) There were approximately 592 pay periods in the sampling in
20 which PTO Award regular rate violations could have occurred. (Sung Decl., ¶ 10.d.) Extrapolating
21 to the full Class, Defendant's maximum exposure for wage statement penalties is \$197,333.33.
22 (*Ibid.*) Waiting time penalty is calculated as 30 days' wages per former employee who was not paid
23 all wages due upon separation of employment. (Lab Code ¶ 203.) Based on Defendant's records,
24 approximately 62.10% of employees in the sampling received a PTO Award and there are 1,543
25 formerly employed Class Members during the Class Period. (Sung Decl., ¶ 10.d.) Thus, Defendant's
26 maximum exposure to the Class for is \$4,681,867.23 (1,543 former employees X 62.10% X 8 hours
27 per day X \$20.36 hourly rate X 30 days). (*Ibid.*)

28 ///

1 **5. Failure to Reimburse Necessary Business Expenses**

2 Plaintiff alleges that Defendant violated Labor Code § 2802 by failing to reimburse all
3 necessary business expenses. (FAC, ¶ 56.) However, Defendant produced in informal discovery
4 handbook policies that outline procedures for employees to obtain reimbursement of their business
5 expenses as well as expense reimbursement reports showing 1,562 reimbursements made to Class
6 Members totaling \$49,256.17. (Sung Decl., ¶ 10.d.) Thus, based on pre-mediation investigation,
7 Class Counsel does not see a basis for assessing damages for this theory of liability. (*Ibid.*)

8 **6. Civil Penalties Under the PAGA**

9 Plaintiff seeks civil penalties under the PAGA for the aforementioned wage and hour
10 violations. (FAC, ¶ 65.) Class Counsel estimate potential exposure for civil penalties under the
11 PAGA to be approximately \$1,569,810, which covers (1) regular rate violations for overtime, meal
12 period premiums, and paid sick leave¹ for 592 pay periods in which PTO Award was paid at \$100
13 per pay period; (2) meal period, rest period, off-the-clock work, wage statement violations, Labor
14 Code § 204, and Labor Code § 1174 at an estimated 5% violation rate by pay period for 48,687 pay
15 periods during the PAGA Period at \$100 per pay period; and (3) waiting time penalties for 500
16 former employees during the PAGA Period at \$100 per former employees. (Sung Decl. at ¶ 10.f.)

17 Plaintiff does not assess damages for the following theories of liability, all of which do not
18 have any private right of action and enforcement are limited to the Labor Commissioner or through
19 PAGA. (*Ibid.*) First, Plaintiff alleges that Defendant violated Labor Code § 1198 through Section 15
20 of IWC Wage Order 7, which provides: “(A) The temperature maintained in each work area shall
21 provide reasonable comfort consistent with industry-wide standards for the nature of the process
22 and the work performed. . . . (C) A temperature of not less than 68° F shall be maintained in the
23 toilet rooms, resting rooms, and change rooms during hours of use.” (FAC, ¶ 16.) Plaintiff alleges

24 _____
25 ¹ Plaintiff alleges that Defendant underpaid paid sick leave to Class Members because it failed to incorporate non-
26 discretionary incentive compensation—i.e., PTO Award—into the paid sick leave rate. (FAC at ¶ 14; see Lab. Code ¶
27 246(l)(1) [“Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
28 the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that
workweek.”].) There is no private right of action for paid sick leave violations. (See Lab. Code ¶ 248.5(e) [stating only
the “Labor Commissioner or the Attorney General may be a civil action” against an employer for violating Labor Code
§§ 245, *et seq.*].) Furthermore, any derivative violations of Labor Code §§ 226(e) and 203 for paid sick leave violations
have been incorporated in the proceeding section. (Sung Decl., ¶ 10.f.)

1 that Defendant failed to provide him and Class Members with reasonable comfort by maintaining
2 the indoor temperature within the range of industry standards by, inter alia, providing adequate
3 heating, air conditioning, and/or ventilation and failed to maintain a temperature of not less than 68°
4 F in toilet rooms and/or breakrooms for Plaintiffs and other aggrieved employees.” (*Ibid.*)
5 Procedurally, there is no private right of action for this theory of liability but civil penalties may be
6 pursued through PAGA. (*See Bright v. 99¢ Only Stores* (2010) 189 Cal.App.4th 1472, 1475.)
7 Substantively, Defendant asserts that there are no industry-wide standards governing indoor
8 temperature in distribution centers, that Cal-OSHA has not promulgated any regulations on this
9 issue, warehouse floors have indoor fans and open shipping bays for ventilation, and restrooms and
10 bathrooms are air-conditioned. (Sung Decl., ¶ 10.f.)

11 Second, Plaintiff alleges that Defendant violated Labor Code § 1198 through Section 14 of
12 IWC Wage Order 7 by failing to provide him and Class Members with suitable seating; specifically,
13 Defendant violated this regulation by failing to provide sufficient seating to Plaintiff and other non-
14 exempt employees while on breaks, which forced Plaintiff and Class Members to sit in their cars or
15 outside the facility on curbs during their meal and rest breaks. (FAC, ¶ 17.) As with the indoor
16 temperature theory, there is no private right of action for this theory of liability but civil penalties
17 may be pursued through PAGA. (*See Bright*, 189 Cal.App.4th at 1475.) Substantively, Defendant
18 asserts that its warehouses provide breakrooms to employees and if employees chose to take their
19 breaks outside the facility or in their vehicles, it was due to their own volition. (Sung Decl., ¶ 10.f.)

20 Third, Plaintiff alleges that he worked under a quota and Defendant violated Labor Code §§
21 2100, *et seq.* governing the use of quotas by warehouse distribution centers. (FAC, ¶ 18.) There is
22 no private right of action under this statute as it may only be enforced by the Labor Commissioner
23 or through PAGA. (*See Lab. Code* § 2107.) Substantively, Defendant confirmed it did not in fact
24 utilize any quotas at its distribution warehouses. (Sung Decl., ¶ 10.f.)

25 Finally, Plaintiff alleges that Defendant violated Labor Code § 212 by forcing him and Class
26 Members to receive their wages via direct deposit or pay cards without a live check option. (FAC,
27 ¶ 19.) Procedurally, there is no private right of action under this statute as it may only be enforced
28 by the Labor Commissioner or through PAGA. (*See Lab. Code* § 225.5 [providing a civil penalty

1 for violation for Section 212].) Substantively, Defendant asserts it complied with Labor Code § 212
2 because it provided Class Members with the voluntary option to choose to choose between direct
3 deposit or pay cards. (Sung Decl., ¶ 10.f.; *see also* Lab. Code § 213(d) [Section 212 does not
4 prohibit an employer from depositing wages through direct deposit provided that the employee has
5 voluntarily authorized that deposit]; DLSE Opinion Letter 2008.7.7, available at
6 www.dir.ca.gov/dlse/opinions/2008-07-07.pdf [opining that the use of paycards, like direct deposits,
7 must be voluntary].)

8 **C. ESTIMATE OF WHAT THE CLASS COULD REASONABLY EXPECT TO BE**
9 **AWARDED AT TRIAL - CMO (G)(3)(a)(iii)**

10 Plaintiff believes that he can prevail at trial and be awarded the entire amount of the
11 maximum exposure. (Sung Decl. at ¶ 11.) However, having tried wage and hours cases to verdict,
12 Class Counsel believes there is also a reasonable possibility that the Court may find in favor of
13 Defendant and award nothing to Plaintiff based on Defendant’s defenses. (*Ibid.*)

14 As to the PTO Award regular rate theory affecting overtime, meal period premiums, and
15 paid sick leave, Defendant contends that federal Fair Labor Standards Act governing exclusions
16 from the regular rate, which California law follows, specifically excludes PTO from the regular rate.
17 (*Ibid*; *see* 29 U.S.C. § 207(e)(2) [excluding from the regular rate “payments made for occasional
18 periods when no work is performed due to vacation, holiday, illness]; *Ferra*, 11 Cal.5th at 873
19 [citing DLSE publications which state that the IWC intended, “in determining what payments are to
20 be included in or excluded from the calculation of the regular rate of pay, California will adhere to
21 the standards adopted by the U.S. Department of Labor to the extent that those standards are
22 consistent with California law”].)

23 As to the off-the-clock work theory, Defendant contends that it has compliant policies
24 prohibiting any supervisors or managers at the company from instructing or allowing non-exempt
25 employees to work off the clock which is an immediately terminable offense and requiring non-
26 exempt employees to be paid for all hours worked, and the sampling records evidence that Class
27 Members were paid 48,651.25 overtime hours totaling over \$1 million and 1,112 double time hours
28 totaling over \$22,000. (Sung Decl. at ¶ 11.) Defendant further represented that it conducted a site

1 visit at the warehouse where Plaintiff worked to observe employees clocking in and out and found
2 that there were minimal to no lines because there were 6 time clocks, shift and meal period start and
3 end times were staggered, and employees were allowed to clock in 3 to 5 minutes before their shift
4 starts, and the sampling time records reflect the staggering of shifts and meal periods. (*Ibid.*) Thus,
5 Defendant maintains that its policies, practices, and class records evidence highly complaint
6 policies and practices, Plaintiff's off-the-clock work theory is not suited for class certification, nor
7 can classwide liability be proven at trial, due to numerous individualized inquiries as to whether
8 which employees worked off-the-clock, whether Defendant knew or should have known that
9 employees were working off the clock, and whether they were instructed or permitted to work off
10 the clock by their supervisors or managers. (*Ibid.*)

11 As to the claim for failure to provide compliant meal and rest periods, Defendant asserts that
12 it has compliant policies in its employee handbook on the provision of meal and rest periods to
13 Class Members, it has paid over 3,500 meal period premiums and 95 rest period premiums to Class
14 Members, and the meal period non-compliance rate in the sampling was less than 1%. (*Ibid.*)
15 Defendant asserts that all of these factors evidence a highly compliant meal and rest period practice,
16 and any non-compliant meal and rest periods resulted from lawful employee waiver or voluntary
17 choice, rather than any systemic policy and/or practice of Defendant. (*Ibid*; *Brinker Rest. Corp. v.*
18 *Sup. Ct.* (2012) 53 Cal.4th 1004, 1034 (rejecting "ensure" standard.) Finally, Defendant maintains
19 Plaintiff's meal and rest period claims are not suited for class certification since individual inquiries
20 would be needed to assess which employees, if any, took non-compliant or missed meal and rest
21 periods, how many meal and rest periods were non-compliant or missed, and the reasons why a
22 particular employee did not take a meal or rest period on a particular shift. (Sung Decl. at ¶ 11.)

23 For wage statement penalties under Labor Code § 226(e) and waiting time penalties under
24 Labor Code § 203, Defendant contends that it would not be subject to statutory penalties based on a
25 good-faith defense since its policies and practices were legally complaint, including whether PTO
26 Awards is included or excluded from the regular rate. (*Ibid.*) Notably, Defendant relied on *Naranjo*,
27 88 Cal.App.5th at 951 for the proposition that an employer's good-faith defenses precludes a
28 "willfulness" finding under Labor Code § 203 and a "knowing and intentional" finding under Labor

1 Code § 226(e) for the imposition of statutory penalties. (Sung Decl. at ¶ 11.)

2 PAGA penalties are also subject to any good-faith defenses that Defendant may raise. (*Ibid.*)
3 Moreover, PAGA penalties are discretionary and subject to reduction by this Court. (*Ibid.*) Pursuant
4 to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties
5 where “. . . if, based on the facts and circumstances of the particular case, to do otherwise, would
6 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, courts have
7 affirmed the reduction of PAGA penalties in the past. As shown in *Carrington v. Starbucks Corp.*
8 (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court’s reduction of PAGA
9 penalties by 90%, citing the employer’s good-faith attempt at complying with the law. Defendant
10 argued that based on their compliant policies and practices and the fact that class recovery is
11 available, the Court will significantly reduce any award of PAGA penalties based on its good-faith
12 compliance with the Labor Code. ((Sung Decl. at ¶ 11.)

13 While the Parties disagree on the application of the law to the facts, each Party recognized in
14 negotiations that, if taken to class certification and trial, the other Party would at least have
15 reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately
16 agreed was reasonable. (*Ibid.*) The total maximum exposure for class claims amounts to
17 approximately \$6,500,360.64. (*Ibid.*) On the regular rate PTO Award theory, if the Court finds that
18 PTO Awards ought to be excluded from the regular rate, then it would award nothing in damages,
19 and Class Counsel believes there is at least a 20% risk factor, bringing the realistic recovery for
20 underpaid overtime to \$42,241.99 and underpaid meal premiums to \$2,844.06. (*Ibid.*)

21 On the off-the-clock work and failure to provide meal and rest period claims, given
22 Defendant’s defenses and its policies and sampling records, the Court could deny class certification,
23 resulting in no recovery for the Class, or classwide damages may be severely limited at trial. (*Ibid.*)
24 Thus, Class Counsel believes there is at least a 90% risk factor, bringing the realistic recovery for
25 unpaid wages due to off-the-clock work to \$127,565.42, unpaid meal period premiums to
26 \$11,906.11, and unpaid rest period premiums to \$17,008.72. (*Ibid.*) Given the California Supreme
27 Court’s decision in *Naranjo*, there is a 85% risk factor that the Court might find Defendant’s good-
28 faith defenses preclude wage statement and waiting time penalties, bringing the realistic recovery to

1 \$29,600 for wage statement penalties and \$702,280.08 for waiting time penalties to \$291,131.56.
2 (*Ibid.*) Total PAGA penalties amounted to \$1,569,810. (*Ibid.*) However, if the Court were to reduce
3 the PAGA penalties by 90% similar to *Carrington*, the PAGA penalties exposure would amount to
4 approximately \$156,981. (*Ibid.*)

5 Thus, the total realistic class damages and PAGA penalties are \$1,090,427.39. (*Ibid.*) The
6 Gross Settlement Amount is 37% of the maximum class and PAGA recovery and well within the
7 reasonable range of settlement for class/PAGA actions. (*Ibid.*)

8 **D. ESTIMATE OF RECOVERY BY AVERAGE CLASS MEMBER AND AGGRIEVED**
9 **EMPLOYEE IF THE SETTLEMENT WERE APPROVED - CMO (G)(3)(a)(iv)&(v)**

10 Based on the estimated number of Class Members, which is 2,446 individuals, each Class
11 Member will receive, on a raw average, approximately \$75.34, which is the pro-rata amount per
12 Class Member based on the estimated Net Settlement Amount of \$174,270.67. (*Id.* at ¶12.) Each
13 Aggrieved Employee would be a member of the Class. (*Id.* at ¶13.) Thus, in addition to the \$75.34
14 average recovery for Class Members, each of the estimated 1,829 Aggrieved Employees will
15 receive, on a raw average, an additional \$5.47 for the PAGA claims. (*Ibid.*)

16 **E. DISCOVERY AND OTHER FACTUAL INVESTIGATION - CMO (G)(3)(a)(vi)**

17 As noted above, the Parties engaged in informal discovery prior to mediation, where
18 Defendant provided Plaintiff with data which included (1) a list with Class Members' employee
19 numbers, dates of employment, job title, location worked, and pay rate; (2) an approximate 15%
20 sampling of Class Members' time and payroll records exported onto Excel, totaling over 350 Class
21 Members; (3) amount of meal and rest period premiums paid; (4) Defendant's employee handbooks
22 and relevant policies and procedures in effect during the Class Period; and (5) Plaintiff's personnel
23 records. (*Id.* at ¶ 14.) Class Counsel and its expert utilized the data from the class list, sampling time
24 and payroll records, and class statistics to perform damages calculation. (*Ibid.*)

25 **F. OTHER PENDING LITIGATION - CMO (G)(3)(a)(vii)&(b)**

26 The Parties are aware of one other class and/or PAGA actions that assert claims similar to
27 those asserted in this action on behalf of a class or group of individuals some of whom would also
28 be members of the Class defined in this Action: *Anthony Powers v. Geodis Logistics LLC et al.*, San

Bernardino Superior Court Case No. CIV SB 2433743, filed on November 8, 2024. (Sung Decl. ¶ 15; Declaration of Timonty M. Rusche, ¶¶ 2-5.)

G. UNCASHED CHECKS, UNPAID RESIDUE OR OTHER UNCLAIMED OR ABANDONED FUNDS - CMO (G)(3)(c)

Participating Class Members shall have 180 days from the date of issuance of the check to negotiate the check. (Agreement, ¶ III.E.9.) The funds from any checks returned as undeliverable, and any checks not negotiated within 180 days, shall be transmitted to the California State Controller's office in the name of the Class Member. (*Ibid.*) Plaintiff believes that sending the funds to the unclaimed funds is superior to redistribution to Class Members that cashed their checks because Class Members that either had their checks lost in the mail or otherwise did not deposit their checks within 180 days will still have an opportunity to receive their settlement funds beyond the 180 days. (Sung Decl. ¶16.) In Class Counsel's experience, there have been occasions where Class Members have contacted Class Counsel after the expiration to claim their settlement proceeds, and because the funds were sent to the State Controller's office, the Class Members were able to receive their settlement funds. (*Ibid.*) Thus, Class Members' right to receive their settlement proceeds will be best protected by this process. (*Ibid.*)

H. SETTLEMENT ADMINISTRATOR - CMO (G)(3)(d)

The Agreement provides an amount not to exceed \$20,000 will be paid for administration fees. (Agreement ¶ III.B.4.) Plaintiff obtained bids from three reputable class action administrators and received the lowest bid from Simpluris, Inc. (Sung Decl. ¶ 17.) Simpluris, Inc. has extensive experience in administering employment class action settlements and submitted a bid of \$19,896 including discounts. (Declaration of Denise Islas ("Simpluris Decl.") ¶¶ 2-9, Exs. A-C.)

I. RELEASE BY CLASS MEMBERS IS LIMITED - CMO (G)(3)(e)

The release is limited to Defendant Geodis Logistics LLC and its officers, directors, employees and agents. (Agreement, ¶ I.II.) The following is a description of the Participating Class Members' Released Claims:

Upon entry of final judgment and Defendant's funding of the Gross Settlement Amount plus employer-side payroll taxes, Participating Class Members, on behalf of themselves and their respective executors, representatives, agents, attorneys, heirs, administrators, successors, trustees, spouses, guardians and assigns, hereby

do and shall be deemed to have released the Released Parties from the Released Class Claims.

“Released Class Claims” mean all claims, debts, liabilities, demands, damages, obligations, penalties, guarantees, costs, expenses, attorneys’ fees and causes of action that were or could have been asserted in this Action based on or arising out of the allegations in the Action, regardless of theory of liability, including, but not limited to, claims under state, federal or local law, claims for failure to pay earned wages and overtime, failure to pay overtime at the regular rate, failure to provide meal periods and/or rest breaks, failure to pay meal/rest break premiums at the regular rate, failure to provide sick pay or pay it at the regular rate, failure to pay wages upon separation of employment, failure to timely pay wages, failure to reimburse business expenses, failure to provide accurate wage statements, failure to provide suitable seating, failure to provide notice of quotas and/or quotas prevented employees from taking meal and rest breaks or were not lawfully implemented, failure to properly regulate temperatures, and claims for unfair and unlawful practices, wage-statement penalties, and “waiting time” penalties, claims under the applicable Wage Orders, Labor Code sections 201, 202, 203, 204, 210, 212, 218.5, 225.5, 226, 226.3, 226.7, 245, 246, 256, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2100, 2800, 2802, 6720, Cal. Code Regis, tit. 8 section 3203, California Industrial Welfare Commission Wage Orders, California Business and Profession Code sections 17200, et seq., and California Code of Civil Procedure section 1021.5.

(*Id.* at ¶ I.GG & III.F.1.)

The following is a description of the Aggrieved Employees’ Released PAGA Claims:

Upon entry of final judgment and Defendant’s funding of the Gross Settlement Amount, the State of California and Plaintiff hereby do and shall be deemed to have released the Released Parties from the Released PAGA Claims.

“Released PAGA Claims” means any and all claims for penalties under Labor Code sections 2698-2699.5, et seq, asserted in the PAGA Notices that arose during the PAGA Period, including violations of California Labor Code sections 201, 202, 203, 204, 210, 212, 225.5, 226, 226.3, 226.7, 245, 246, 256, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 1198.5, 2100, 2800, 2802, 6720, and the IWC Wage Order, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice, regardless of theory of liability.

(*Id.* at ¶ I.HH & III.F.2.)

J. NOTICE TO CLASS MEMBERS, NON-CLAIMS MADE SETTLEMENT, AND NO REVERSION TO DEFENDANT - CMO (G)(3)(f)-(h)

Notice to Class Members will be given by First Class Mail. (*Id.* at ¶ III.E.2.) Specifically, no later than 30 calendar days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member’s Class Data. (*Id.* at ¶ III.E.2.a.) The Settlement Administrator shall

1 update the Class Data using the National Change of Address database prior to mailing the Class
2 Notice Packets. (*Id.* at ¶ III.E.2.b.) No later than 14 days after receiving the class data, the
3 Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class
4 regular U.S. Mail using the mailing address information provided by Defendant. (*Ibid.*) If a Class
5 Notice Packet is returned because of an incorrect address, the Settlement Administrator will
6 promptly, and not longer than 14 days from receipt of the returned packet, search for a more current
7 address for the Class Member and re-mail the Class Notice Packet to the Class Member. (*Id.* at ¶
8 III.E.2.c.) If a Notice Packet is returned as undeliverable with no forwarding address, the Settlement
9 Administrator shall take reasonable steps including, performing address searches for all mail
10 returned without a forwarding address using available email addresses, phone numbers, social
11 security numbers, credit reports; and promptly re-mailing to Class Members for whom new
12 addresses are found. (*Ibid.*)

13 Class Members will be automatically paid from the settlement and do not need to submit
14 claim forms to be entitled to settlement payments pursuant to the terms of the Agreement.
15 (*Id.* at ¶ III.E.3.c., Ex. A.) If a Class Member does not wish to take part in this settlement and be
16 bound by the release, the Class Member must submit an exclusion/opt-out request. (*Id.* at ¶
17 III.E.3.c., Exs. B, C.) Should any Class Member not submit an exclusion/opt-out request, the Class
18 Member will automatically become a Participating Class Member, will receipt payment, and will be
19 bound by all terms and conditions of the Settlement. (*Id.* at ¶ III.E.3.c.) Such obligations are
20 thoroughly identified in each Class Member’s Notice. (*Id.* at Ex. A.) This is a non-reversionary
21 settlement, as the entirety of the settlement amount will be fully paid out. (*Id.* at ¶ III.A.)

22 **K. COMPENSATION FOR UNPAID WAGES - CMO (G)(3)(i)&(j)**

23 50% of each Participating Class Member’s Settlement Share is in settlement of wage claims
24 (“Wage Portion”) and is subject to wage withholdings and shall be reported on IRS Form W-2. (*Id.*
25 at III.C.3.a.) 50% of each Participating Class Member’s Settlement Share is in settlement of claims
26 for interest and penalties allegedly due to Class Members and shall not be subject to wage
27 withholdings and shall be reported on IRS Form 1099. (*Id.* at III.C.3.b.) The portion of the PAGA
28 Payment distributed to Aggrieved Employees shall not be subject to wage withholdings and shall be

1 reported on IRS Form 1099. (*Id.* at III.B.3.) The Gross Settlement Amount excludes any employer-
2 side payroll taxes on the Wage Portion, which must be paid by Defendant. (*Id.* at III.A.)

3 **L. PROPOSED NOTICE, OBJECTION AND EXCLUSION FORMS - CMO (G)(3)(k)**

4 Attached as Exhibits A, B and C to the Agreement are the Proposed Class Notice, Objection
5 Form and Exclusion Forms. Plaintiff prepared the forms based on previously approved forms by
6 this Court. The Parties have drafted the Proposed Class Notice in a manner that will be likely to be
7 readily understood and the notice will be provided in both English and Spanish by the
8 Administrator. (Sung Decl., ¶ 17; Simpluris Decl., Ex. B [budgeting Spanish translation of the
9 notice].)

10 **M. TYPICALITY AND ADEQUACY OF REPRESENTATION**

11 **1. Class Representative's Claims are Typical of the Class**

12 The commonality requirement is met when there are questions of law and fact common to the
13 class. *See Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1019. ("The existence of shared legal
14 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
15 couple with disparate legal remedies within the class".) Commonality requires only that some
16 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation
17 are identical. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473. Defendant's conduct
18 is central to the commonality inquiry. *See City of San Jose v. Superior Court* (1974) 12 Ca1.3d 447,
19 460 (1974). Where the employer's conduct is uniformly directed at a class of employees, as it is
20 here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See*
21 *Stephens v. Montgomery Ward & Co., Inc.* (1987) 193 CalApp.3d 411, 421.

22 Plaintiff claims that Defendant, as a matter of its corporate policy, practice, or procedure
23 violated the Labor Code by failing to factor in non-discretionary incentive compensation into the
24 regular rate for overtime, meal premiums, and paid sick leave; did not provide all meal and rest
25 periods due to Class Members; caused Class Members to work off the clock waiting in line to clock
26 in and out; did not reimburse all necessary business expenses; had a quota system in place; had
27 Class Members sit on the curb or in their cars to eat their meals; did not provide comfortable
28 temperature in the workplace; required Class Members to receive their wages by direct deposit or

1 pay card; did not furnish accurate wage statements to Class Members; and did not pay all wages due
2 to Class Members upon their separation of employment. (Declaration of Randall Bachman
3 [“Bachman Decl.”], ¶ 3.) Plaintiff was employed by Defendant, like all of the other Class Members,
4 and allegedly suffered the same Labor Code violations at issue. (*Ibid.*) Thus, Plaintiff’s claims are
5 typical to those of Class Members. (*See ibid.*) The Class Representative does not have any interests
6 adverse to the class, nor has any such issue been raised or presented. (*Id.* at ¶ 4.) The Class
7 Representative has taken all necessary steps to represent the interests of the Class, by making
8 himself available to answer questions, gather and provide documents, and review and execute the
9 Agreement and his accompanying declaration. (*Id.* at ¶ 5.) For such reasons, the Class
10 Representative has adequately represented the Class Members and will continue to do so.

11 **2. Class Counsel Have Adequately Represented the Class and Has Experience**
12 **with Wage and Hour Class Actions**

13 From the inception of the case, Class Counsel have protected the interests of the Class. Class
14 Counsel analyzed the pre-mediation production, including the time and pay records, prior to the
15 mediation to perform a damages analysis. The mediation and settlement were obtained for the
16 benefit of the Class, not for the individual Class Representative. Class Counsel are experienced
17 wage and hour class action attorneys and are competent to represent the class. (Sung Decl. ¶¶18-23;
18 Declaration of Tiffany L. Luu ¶¶ 2-6.)

19 **N. CLASS REPRESENTATIVE ENHANCEMENT AND ATTORNEYS’ FEES/COSTS**

20 **1. Attorneys’ Fees and Costs**

21 The Agreement allows Plaintiff to seek up to one-third (approximately 33.33%) of the Gross
22 Settlement Amount, or \$133,333.33, as payment for attorneys’ fees. (Agreement, ¶ II.B.2.) The
23 California Supreme Court established that when class action litigation establishes a monetary fund
24 for the benefit of the class members, and the trial court in its equitable powers awards class counsel
25 a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an
26 appropriate percentage of the fund created. (*Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th 480, 503.)
27 “The recognized advantages of the percentage method—including relative ease of calculation,
28 alignment of incentives between counsel and the class, a better approximation of market conditions

1 in a contingency case, and the encouragement it provides counsel to seek an early settlement and
2 avoid unnecessarily prolonging the litigation.” (*Ibid.* [internal citations omitted].) In *Laffitte*, the
3 Court affirmed an award of attorneys’ fee award of \$6,333,333.33, based on one-third of the \$19
4 million common fund. (*Id.* at 503.) As in *Laffitte*, the Parties have agreed to a one-third of the
5 common fund for attorney’s fees.

6 Further, the Parties have agreed to payment of up to \$25,000 as reimbursement for Class
7 Counsel’s litigation costs. (Agreement, ¶ III.B.2.) Class counsel have, at their own risk, expended
8 costs, for example, to file this instant action, service of process, payment of mediation fees, expert
9 fees, and other litigation related costs. Class Counsel will only request the amounts actually
10 expended up to a maximum of \$25,000 and will provide their supporting declarations at the time of
11 final approval. Based on the foregoing, the Court should preliminarily approve the attorney’s fees
12 and costs being requested by class counsel.

13 **2. Proposed Payment to Class Representative**

14 Plaintiff requests an enhancement award of \$7,500.00. Plaintiff has not previously been a
15 named plaintiff in any other class action cases. (Bachman Decl., ¶ 5.) Plaintiff understood that the
16 filing of this action was a matter of public record and this was being prosecuted on a classwide
17 basis. (*Id.* at ¶ 6.) Plaintiff further understood that a representative action would take longer in
18 litigation than an individual action and undertook such risks. (*Ibid.*) Plaintiff did not incur any
19 expenses, but has expended a large amount of time on this matter. (*Ibid.*) Plaintiff spent
20 approximately 18 hours discussing this matter with Class Counsel on a number of occasions,
21 including proving substantive information regarding Defendant’s practices, and providing
22 documents related to her own claims and the claims of Class Members. (*Ibid.*)

23 Plaintiff took these risks upon himself and the whole class benefited from this. Class
24 Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if
25 they did not prevail, nor did they have to face the potential for retaliation and not getting future
26 employment had they filed a lawsuit which is a public record. These are significant benefits, even
27 apart from the time the Plaintiff has spent working on this case, that weigh in favor of granting the
28 requested enhancement, which is also consideration for the general individual release to which

1 Plaintiff agrees on his own behalf. Courts have routinely granted approval of settlements containing
2 such enhancements. In *League of Martin v. City of Milwaukee* (E. D. Wis. 1984) 588 F.Supp. 1004,
3 the court held that the proposal settlement properly granted the class representatives individual
4 relief. It is “not uncommon for Class Members . . . to receive special relief in settlement . . . [The
5 Plaintiff] . . . had been instrument in prosecuting this lawsuit since the date it was filed.” *Id.* at
6 1024. In *Kyriazi v. Western Elec. Co.* (D. N. J. 1981) 527 F.Supp. 18, a named plaintiff in a Title
7 VII class action was awarded individual relief of back-pay and interest, reinstatement, punitive
8 damages and counsel fees. Similarly, in *Women’s Committee for Equal Employment Opportunity v.*
9 *NBC* (S.D.N.Y. 1977) 76 F.R.D. 173, the court approved as fair a settlement that included awards to
10 16 Class Representatives of virtually all the damages they sought.

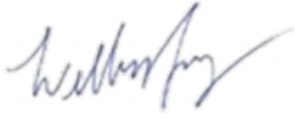
11 **V. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
13 approval of the proposed settlement, sign the proposed Order, and approve and authorize mailing of
14 the proposed Class Notice. Plaintiff further requests that a hearing date for the final fairness and
15 final approval hearing be set for a date on or about June 4, 2025.

16
17 DATED: December 13, 2024

Respectfully submitted,

18 **JUSTICE FOR WORKERS, P.C.**

19
20
21 By: 

William C. Sung

Tiffany L. Luu

Attorneys for Plaintiff RANDALL BACHMAN

View a Reservation

Reservation
Reservation ID: 955782874429
Reservation Type: Motion for Preliminary Approval of Class Action Settlement
Case Number: CVRI2400956
Case Title: BACHMAN vs GEODIS LOGISTICS LLC
Filing Party: RANDALL BACHMAN (Plaintiff)
Location: Historic Court House - Department 1
Date/Time: January 15th 2025, 8:30AM
Status: RESERVED
Number of Motions: 1

Motions
Motion for Preliminary Approval of Class Action Settlement
 Reschedule >
 Cancel >

Reservation History

Chat

Status Date	Status	Action
12/03/2024 1:06PM	Reserved by User Date: January 15th 2025, 8:30AM Location: Historic Court House - Department 1 Motions: 1	\$ View Receipt

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