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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF YOLO

STEVEN SCOTT, VICTOR AUGUST, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiffs, vs. PERFORMANCE FOOD GROUP, INC., a Colorado corporation; CORE-MARK INTERNATIONAL, INC., a Delaware corporation; PERFORMANCE FOODSERVICE, an unknown business entity; CME TRANSCO, LLC, a Delaware corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. CV2024-0729 **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE** Date: March 10, 2026 Time: 9:00 a.m. Judge: Hon. Timothy L. Fall Dept.: 11

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other

I. INTRODUCTION

Plaintiffs Steven Scott and Victor August ("Plaintiffs"), on behalf of themselves and the approximately 1,001-member putative class,[1] respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement Agreement (hereinafter "Agreement"[2]) entered into between Plaintiffs and Defendants CME Transco, LLC and Core-mark International, Inc. ("Defendants") (collectively, Plaintiffs and Defendants are the "Parties"). The Agreement seeks to resolve claims against Defendants in this matter in exchange for a non-reversionary $1,500,000 Gross Settlement Amount. The proposed Class is comprised current and former California-based truck drivers, driver helpers, and related job classifications employed by Defendants Core-Mark International, Inc. and/or CME Transco, LLC, within the State of California, at any time from March 19, 2020, through June 22, 2025.[3] (**Ex. 1** at ¶ 5). It is requested that the Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the claims and Defendants' potential liability exposure, this proposed settlement of $1,500,000 is within the range of reasonableness. This settlement is estimated to pay Class Members an average payment of $822.18. The proposed Agreement satisfies all the criteria for preliminary approval. Accordingly, Plaintiffs seek: (1) preliminary approval of the terms of the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiffs as Class Representatives; (4) appointment of Mara Law Firm, PC and Lawyers *for* Justice, PC as Class Counsel; (5) approval of the Parties' Notice of Class Action Settlement[4] (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for final approval.

II. BACKGROUND

Defendants are an interstate freight carrier that transport a variety of products, including general freight, dry bulk, cold food, beverages, and paper. In order to carry out its business, Defendants employs drivers, like Plaintiffs, in California. On March 19, 2024, Plaintiff Steven Scott filed this class action in Yolo County Superior Court (Case No. CV2024-0729), alleging various wage and hour violations on behalf of similarly situated employees for Defendants

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[1] The number of estimated class members is the same as the estimated number of PAGA aggrieved employees.

[2] The Parties' Agreement is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as **Exhibit 1**. "**Ex. 1**" herein refers to the Parties' Agreement.

[3] The Agreement contains an Escalator Provision where if triggered, may roll back the Class Period to an earlier date ("Alternate End Date"). *See* **Ex.1** at ¶¶ 5, 54A

[4] The Class Notice is attached to the Agreement as **Exhibit A**.

including: (1) failure to pay overtime; (2) failure provide meal period premiums; (3) failure to provide rest period premiums; (4) failure to pay minimum wages; (5) failure to pay all wages due at termination; (6) failure to timely pay wages during employment; (7) failure to provide accurate itemized wage statements; (8) failure to keep requisite payroll records; (9) failure to reimburse business expenses; and (10) violations of California Business and Professions Code sections 17200, et seq. On March 19, 2024, Plaintiff Steven Scott also filed a separate PAGA action in Yolo County Superior Court (Case No. CV2024-0730) based on the same theories. Mara Dec. ¶ 9.

On March 20, 2024, Plaintiff Victor August filed a class action entitled *Victor August v. CME Transco, LLC* in the Sacramento County Superior Court (Case No. 24CV005326), alleging causes of action for Defendants (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) knowing and intentional failure to comply with itemized wage statements; (5) failure to pay wages at termination; (6) failure to reimburse business expenses; and (7) violations of California Business and Professions Code sections 17200, et seq. On March 21, 2024, Plaintiff Victor August filed a PAGA action in Sacramento County Superior Court (Case No. 24CV009997) based on the same theories. Mara Dec. ¶ 10

Pursuant to the Settlement Agreement, Plaintiff Steven Scott filed a First Amended Complaint encompassing all of the claims discussed above and adding Plaintiff Victor August as representative, which was accepted on October 14, 2025. Subsequently, the August Class and PAGA actions in the Sacramento Superior Court were dismissed, leaving this class action (Case No. CV2024-0729) as the lead case. Mara Dec. ¶ 11.

III. INVESTIGATION AND LITIGATION HISTORY

a. Discovery and Investigation

The Parties conducted significant investigation and discovery of the facts and law. Through informal discovery, Defendants produced relevant policy documents that covered drivers' employment with Defendants, such as employee handbooks and Defendants' wage and hour policies. Defendants also produced a sampling of time and wage records for Class Members. Plaintiffs also requested, and Defendants produced, employee data points, such as the number of

Class Members and the number of workweeks worked by Class Members during the relevant time period, to establish a potential exposure model in preparation for mediation. From this discovery and data, Plaintiffs and their Counsel were able to analyze Defendants' liability and prepare a realistic damage model. Mara Dec. ¶ 12; Declaration of Ryan Slinger ("Slinger Dec.) ¶¶ 8-10.

b. The Parties Agreed to Attend Mediation

The Parties attended an all-day mediation with respected mediator Kevin Barnes on April 23, 2025. The arms-length settlement discussion at this mediation ultimately resulted in settlement. The Parties then met and conferred over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek preliminary approval of the Agreement in the instant motion. Mara Dec. ¶ 13; Slinger Dec. ¶11.

c. The Parties' Conflicting Positions

i. Unpaid Wages

Employees must be paid for all "hours worked," as that phrase is defined in the Wage Order and interpreted by California courts.[5] Plaintiffs contend that class members were not paid for all hours worked. Throughout the class period, Defendants employed drivers based on a piece-rate and an hourly basis. For piece-rate drivers, Plaintiffs that Defendants only paid drivers-based number of miles driven, cases delivered and stops made. However, Plaintiffs contend that Defendants needed to also separately compensate Plaintiffs for all non-productive time tasks such as time spent performing inspections, safety checks, paperwork, loading and preparing trailers, dealing with customers, and other general housekeeping duties.[6] Mara Dec. ¶ 14. Likewise, Plaintiffs contend that hourly employees were also not paid for the aforementioned tasks because Defendants forced and instructed employees to perform these tasks off-the-clock in order to meet Defendants strict time frames. Further, Defendants required hourly employees to undergo mandatory security checks at designated locations after clocking out for the day.[7] Mara Dec. ¶ 15.

Defendants dispute the unpaid wages claim in its entirety and note that employees were always paid for all hours worked in accordance with California law. Defendants contend that they

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[5] Hours worked is defined in Wage Order 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Wage Order 9-2001, Subd. 2(K); see also *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833.

[6] *See Cardinas v. McLane Foodservices, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49; *see also* Cal. Lab Code § 226.2.

[7] *See Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038.

can point to wage statements verifying that they paid piece-rate employees for non-productive time. Similarly, Defendants assert that they do not have a policy of forcing employees to work off-the-clock and that it could provide declarations from numerous employees verifying that drivers were instructed to perform all tasks on-the-clock and that drivers were paid for all time worked. As such, Defendants maintain that the unpaid wages claims would fail both at certification and on the merits. Mara Dec. ¶ 16.

ii. Meal and Rest Breaks

Plaintiffs also contend that drivers were not able to take complaint meal and rest breaks. Plaintiffs allege that they and other class members had to remain on-call during meal and rest breaks. Particularly, Plaintiffs contend that they must always be near trucks in order to guard and protect its contents, and must always keep their phones with them to immediately respond when dispatch calls. Similarly, drivers need to routinely work through meal and rest breaks in order to meet and comply with Defendants' demanding delivery schedules. Moreover, Plaintiffs claim that there is a rebuttable presumption that meal periods are not taken whenever Defendants' records show a missed, short, or delayed meal period. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 77. Plaintiffs assert that following *Loper Bright Enters. v. Raimondo,* 603 U.S. 369, 412-13(2024) and *Murillo-Chavez v. Bondi,* (9th Cir. 2025) 128 F.4th 1076, 1086, that meal and rest break claims are not necessarily preempted by the FMCSA's December 28, 2018, Decision and Order given courts can no longer simply defer to agency determinations. Mara Dec. ¶ 17.

Defendants maintain that Plaintiffs' meal and rest break claims are preempted and unenforceable by the FMCSA's Determination and Order and that *Loper* and *Murillo* do not change this analysis. *See Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.* (9th Cir. 2021) 986 F.3d 841, 846. Even if the claims were not preempted, Defendants assert that they had compliant meal and rest break policies at all times. Defendants emphasize that during these breaks, drivers were completely free to do whatever they wanted and that they could provide driver declarations verifying as such. Moreover, further complicating the issue, Defendants contend that they also maintain valid and enforceable meal waivers for drivers and that they have previously paid meal period premiums to drivers. As such, Defendants remain confident that they would be able to rebut any presumption under *Donohue.* Thus, Defendants contend that these claims not only lack merit, but that they are highly individualized and not certifiable. Mara Dec. ¶ 18.

iii. Reimbursements

Plaintiffs claim that Defendants fail to reimburse drivers for business expenses. Plaintiffs argue that Defendants require drivers to use their personal cell phones in order to remain in constant contact and provide updates about things such as delivery status. Despite this Defendants fail to reimburse employees for the costs associated with the use of their personal cell phones. Mara Dec. ¶ 19. Defendants contend that they never required employees to use their personal cell phone for business purposes. Defendants further contend if drivers decided to use their personal cell phones for business purposes, it was solely that driver's choice and not the result of any purported mandate by Defendants.[8] Mara Dec. ¶ 20.

iv. Wage Statements

Plaintiffs allege Class Members are not provided with accurate itemized wage statements in violation of California Labor Code § 226. Specifically, Plaintiffs allege that for piece-rate employees, Defendants failed to correctly itemize the units/rates for piece-rate compensation such as mileage, deliveries, or stops. Additionally, Plaintiffs make the derivative claim that wage statements were inaccurate and noncompliant for failure to pay all wages and premiums, as outlined above. If Plaintiffs underlying claims failed, these derivative claims would fail as well. Mara Dec. ¶ 21. Further, Defendants argue that they followed the requirements of section 226 for all employees, including those paid on a piece-rate basis, and that it could provide examples of perfectly compliant wage statements. Moreover, even if Plaintiffs were successful in their underlying claims, Defendants argue that the underlying claims cannot form a basis for the wage statement claims.[9] Mara Dec. ¶ 22.

v. Waiting Time Penalties

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[8] Under Labor Code section 2802, the employer must "indemnify its employees for expenses they necessarily incur in the discharge of their duties[.]" The California Supreme Court in *Gattuso v. Harte-Hanks Shoppers, Inc.*, makes clear that the goal of section 2802 is "to prevent employers from passing on their operating expenses to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554, 569-71.

[9] *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, (noting employees do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate).

Plaintiffs also pursued claims for failure to provide accurate waiting time penalty claims. These claims are derivative of Plaintiffs' underlying claims outlined above. Should Plaintiffs' underlying claims fail, these claims would also fail. Mara Dec. ¶ 23. Defendants emphasize, that Plaintiffs would have to prove Defendants "willfully" failed to pay employees the appropriate wages and premiums due upon separation of employment. Defendants contend that any failure to pay wages due at the separate of employment was not willful and that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those wages.[10] Mara Dec. ¶ 24.

IV. TERMS OF THE PROPOSED SETTLEMENT

a. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of $1,500,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of up to $525,000 (35% of the GSA)[11]; (b) actual litigation expenses estimated not to exceed $40,000;[12] (c) a Class Representative Enhancement Payments to the named class representative in an amount which will not exceed $10,000 to each class representative; (d) settlement administration fees and expenses to ILYM Group, Inc.("ILYM"), estimated not to exceed approximately $17,000;[13] and (e) $75,000 allocated to Plaintiffs' claims under the PAGA. Of this payment, 75%, or $56,250 will be provided to the LWDA, and 25%, or $18,750, will be available for distribution to PAGA Group Members.

b. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that $823,000 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members. Participating Class Members will receive a pro-rated share of the NSA, less applicable withholdings, based on the number of

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[10] *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

[11] Although Class Counsel seeks attorneys' fees under the percentage method, Class Counsel will also provide the Court with their lodestar information at final approval.

[12] These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the amount of actual costs incurred during the litigation of this case. Should the actual costs be lower than $40,000, the difference will be added to the Net Settlement Amount for disbursement to Participating Class Members.

[13] ILYM will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Agreement, the difference will be added to the Net Settlement Amount for distribution to Participating Class Members.

workweeks they worked in California for Defendants during the Class Period. *See* **Ex. 1** at § III (A)(i). In addition, PAGA Group Members will receive a pro-rated share of the Net PAGA Settlement Amount, less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendants during the PAGA Period. **Ex. 1** at § III (60)(A)(i).

c. Notice to the Class

Within 10 business days after entry of the Preliminary Approval Order, Defendants shall send an electronic database with the Class and PAGA Data to the Settlement Administrator. **Ex. 1** at § III(63)(D)(i); *see also* **Ex. 1** at § I (7) and (30). Within 10 business days after receipt of the database, the Settlement Administrator will mail the Class Notice to Class Members. **Ex. 1** at § III (63)(D)(iii). After notices are mailed, Class Members have 60 days to respond. **Ex. 1** at § I (41). Class Members may respond to the settlement by requesting to be excluded from it or objecting to it. **Ex. 1** at § III (63)(E) and (F). Class Members can also submit a dispute as to the number of workweeks attributed to them. **Ex. 1** at § III (63)(G).

d. Distribution of Funds

Defendants shall wire or otherwise provide to the Settlement Administrator the GSA no later than ten (10) business days after the Effective Final Settlement Date. **Ex. 1** at § III (63)(L)(i); *see also* **Ex. 1** at § I (18) and (21). Within ten (10) business days after Defendants funds the entire GSA, the Settlement Administrator shall disburse the settlement funds. **Ex. 1** at § III (63)(L)(ii). Participating Class Members and PAGA Group Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. All funds associated with checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to the State of California's Controller's Office under the Unclaimed Property Statutes in the name of the Class Member. **Ex. 1** at § III (63)(N)(ii).

e. Release of Claims

In exchange for a portion of the Net Settlement Amount, Participating Class Members will, upon the Effective Final Settlement Date, release the Released Parties from any and all claims alleged by Plaintiffs, on behalf of themselves and/or any putative class of employees as set forth in the *Scott* Class Action and the *August* Class Action, based on the facts and causes of action alleged in the first amended consolidated complaint that will be filed in the *Scott* Class Action, and that could have been asserted based on said facts and causes of action, including any and all claims relating to the payment of minimum wages, overtime wages, rest periods, meal periods, wage statement and paystubs, penalties, meal and rest period penalties, waiting time penalties, unreimbursed business expenses, unfair business practices related to the alleged Labor Code violations, interest, and attorney's fees during the Class Period. **Ex. 1** at § I (38). In addition, Plaintiffs, or such other designee who has properly exhausted administrative requirements, acting in the capacity of a representative of the State of California, and on behalf of the group of PAGA Group Members, shall agree to release any and all claims for PAGA penalties alleged by Plaintiffs, as set forth in the *Scott* PAGA Action and the *August* PAGA Action, and the corresponding LWDA notice letters (including but not limited to the January 8, 2024 letter on behalf of Plaintiff Steven Scott and alleged aggrieved employees, and the March 14, 2024 letter on behalf of Plaintiff Victor August and alleged aggrieved employees), based on the facts and causes of action alleged in the first amended consolidated complaint that will be filed in the *Scott* Class Action, and that could have been asserted by the Labor Commissioner against Defendants under the PAGA during the PAGA Period, Cal. Lab. Code § 2698, *et seq*. based on said facts and causes of action, including any and all claims for PAGA penalties relating to the payment of minimum wages, overtime wages, rest periods, meal periods, wage statement and paystubs, penalties, meal and rest period penalties, waiting time penalties, unreimbursed business expenses, interest, and attorney's fees during the PAGA Period. **Ex. 1** at § I (39). Plaintiffs have also agreed to a general release of his claims. **Ex. 1** at § III (66).

V. ARGUMENT

a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court

Rule 3.769 requires court approval for class action settlements.[14] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." California Rules of Court, Rule 3.769(g). Rule 3.769 further requires a noticed motion for preliminary approval of

[14] The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

class settlements. Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.

b. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court's grant of preliminary approval is therefore requested.

i. The Settlement was Reached as a Result of Arm's-Length Negotiations

The settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Prior to, at, and after the mediations, Counsel for the Parties conducted extensive arm's length settlement negotiations until the settlement was reached. While Plaintiffs believe in the merits of their case, they also recognizes the inherent risks of litigation and understands the benefit of the Class receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, preparing for and conducting a trial, and/or an appeal that may take several more years to litigate.

ii. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The settlement was only possible following investigation, discovery, and evaluation of Defendants' policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

iii. Counsel for Both Parties are Experienced in Similar Litigation

Both Plaintiffs' Counsel and Defendants' Counsel are particularly experienced in wage and hour employment law and class actions. Mara Dec. ¶¶ 1-8; Slinger Dec. ¶¶1-6. Plaintiffs' Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Defendants' Counsel practices labor and employment law and have represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class actions.

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in determining whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id.*

In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." *Kullar, supra,* 168 Cal.App.4th at 133. *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, *supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*

Associates (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties' investigation and discovery revealed many reasons to discount claims and agree to this settlement.

1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs' Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant discovery and an evaluation of Defendants' relevant policies and procedures, as well as the data that Defendants produced for the putative class as referenced above. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted allowed Plaintiffs to evaluate the strengths and weaknesses of their theories of liability. As explained herein, Defendants maintain that the discovery produced demonstrates that it would succeed at both in denying class certification and on the merits. Although, Plaintiffs believe this case is suitable for certification on the claimed bases that there are company-wide policies and practices that Plaintiffs contend violate California law and uniformly affect the Class Members, Defendants' counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims. While remaining confident in the strengths of their claims, all of these factors led Plaintiffs to discount the following potential damage exposure.

2. Potential Exposure on Plaintiffs' Claims

The settlement encompasses approximately 74,547 workweeks. *See* **Ex. 1** at § III (54)(A). This equates to approximately 285,153 shifts. Employees earned around $37.54 an hour on average. As discussed, Plaintiffs allege that Defendants fail to pay drivers for all time worked for failing to pay for time spent performing tasks such as inspections, safety checks, loading and preparing trailers. Through the discovery conducted, Plaintiffs estimated that drivers averaged 1 hour of unpaid time a day. Thus, the potential exposure for unpaid wages would be $10,704,643.62 (285,153 shifts x $37.54 average hourly rate x 1 hour = $10,704,643.62). Mara Dec. ¶ 25. Defendants contend these amounts are zero because it lawfully pays drivers for all hours worked. Specifically, Defendants argue that piece-rate drivers are paid for all non-productive time and hourly drivers are not instructed to perform any work off-the-clock. Accordingly, Defendants claim Plaintiffs should take nothing on these claims and, if the factfinder agreed, Plaintiffs would take nothing. Although remaining confident in their position, Plaintiffs had no way of knowing how the factfinder would rule on this issue, and a substantial discount had to be given to make settlement possible. Mara Dec. ¶ 26.

Plaintiffs contend that drivers did not receive meal and rest breaks because they were forced remain on-call at all times and routinely had to work through breaks in order to satisfy Defendants strict delivery schedules. Assuming a meal or rest period violation in every single shift, Plaintiffs estimated the potential exposure at $10,704,643.62 (285,153 shifts x $37.54 average hourly rate = $10,704,643.62). Mara Dec. ¶ 27. Defendants contend that these claims are worth nothing because drivers' meal and rest break claims are preempted based on the FMCSA's December 28, 2018, Decision and Order. Regardless Defendants also assert that their meal and rest period policies and practices are wholly compliant. Further, adding to their defense, Defendants contend that they have valid and enforceable meal break waivers for drivers. If the factfinder agreed with Defendants, Plaintiffs would receive nothing on these claims. Mara Dec. ¶ 28.

Plaintiffs allege that Defendants fail to reimburse drivers for personal cell phone usage, even though they are expected to remain in constant contact with Defendants and provide status updates about deliveries. If Plaintiffs were to prevail on their reimbursement cause of action, class members would be entitled to reimbursement for a reasonable percentage of their costs associated with their personal cell phones. Therefore, the maximum potential exposure under this theory of liability would be $1,473,900 (approximately 51 months during the relevant time period x $50, or 50% of a $100 monthly phone bill, x 578 employees = $1,473,900). Mara Dec. ¶ 29. However, Defendants contends these amounts are zero because it never required employees to use their personal cell phone for business purposes. Further, if drivers decided to use their personal cell phones for business purposes, it was solely that driver's choice and not the result of any purported mandate by Defendants. Mara Dec. ¶ 30.

Plaintiffs allege that Defendants failed to provide accurate itemized wage statements which is largely derivative of Plaintiffs' underlying claims. If Plaintiffs were to prevail on these claims, the maximum potential exposure would be $2,312,000. ($4000 maximum penalty x 578 employees in wage statement class = $2,312,000). Mara Dec. ¶ 31. However, if Plaintiffs' underlying unpaid wages and meal and rest break claims failed, this claim would also fail. Moreover, Defendants also asserts that any violation of California Labor Code § 226 was not "knowing and intentional" and that drivers cannot show that they have suffered an injury as a result of any potential violation. Mara Dec. ¶ 32.

Similarly, if Plaintiffs prevailed on their underlying claims, class members may be entitled to waiting time penalties for failure to pay all wages due at termination. Plaintiffs calculate the potential maximum exposure for this waiting time penalties cause of action as $9,085,258.12 (719 former employees x 30 days x 11.22 average hours x $37.54 average hourly rate = $9,085,258.12). Mara Dec. ¶ 33. But again, if Plaintiffs' underlying claims for unpaid wages and meal and rest breaks failed, so would this claim. Further, there is also a possibility that the factfinder could find these violations are not willful. If this were to occur, Plaintiffs and the class would receive nothing under these claims. In addition, a good faith dispute that any wages are due will preclude any imposition of waiting time penalties. Mara Dec. ¶ 34.

Plaintiffs also seek PAGA penalties for the failure to pay all time worked, failure to provide meal periods, failure to provide rest periods, failure to reimburse business expenses, failure to provide accurate wage statements, and failure to pay wages owed twice per month. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. The statute of limitations for PAGA violations go back one year. The potential damages under PAGA for Plaintiffs' core claims is thus $10,460,400 ($100 x 6 PAGA violations x 17,434 pay periods = $10,460,400). Mara Dec. ¶ 35. Defendants contend that Plaintiffs would not be allowed to "stack" PAGA penalties. If the Court were to agree with this and only award one PAGA penalty per pay period, Defendants' exposure would be $1,743,400. Further, as Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs' class claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs and the PAGA Group Members –

assuming liability is proven as to each of Plaintiffs' claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. As such, the Court may reduce any PAGA penalty amount awarded to Plaintiffs and the PAGA Members. Mara Dec. ¶ 36.

Although remaining confident in their position, Plaintiffs had no way of knowing how the factfinder would rule on these issues, and a substantial discount had to be given to make settlement possible. Thus, <u>not taking into account any of Defendants' defenses or arguments</u>, Plaintiffs' estimated that if they were successful in their core claims, Defendants' total exposure would be approximately $22,883,187.24 [$10,704,643.62 (unpaid time) + $10,704,643.62 (meal and rest breaks) + $1,473,900 (reimbursements) = $22,883,187.24]. If the fact finder were to side with Defendants on the unpaid wages and meal and rest break claims, Plaintiffs and the Class Members would also not be entitled to any damages for derivative wage statement, waiting time, or PAGA penalties. If Plaintiffs are successful in their unpaid wages and meal and rest break claims, and are able to prove that Defendants' wage statement and waiting time penalties violations were "knowing and intentional" and "willful," they may also be entitled to damages for wage statement penalties and waiting time penalties in the amounts of $2,312,000 and $9,085,258.12, respectively. Plaintiffs and the PAGA Group Members may also be entitled to PAGA penalties in the amount of $10,460,400, subject to Court reduction. Mara Dec. ¶ 37.

3. The Settlement Amount of $1,500,000 is Reasonable

In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the settlement amount of $1,500,000 – with an average settlement share amount estimated at $822.18[15] – is a reasonable and fair settlement amount. Mara Dec. ¶¶ 14-38; Slinger Dec. ¶11. It should be noted that a settlement is not judged solely against what might have been recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *E.g. Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ("[c]ompromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be

[15] $823,000 Net Settlement Amount / 1001 estimated class members = $822.18

successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 628 ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not…render the settlement inadequate or unfair").

c. Provisional Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well defined community of interest in the questions of law and fact involved affecting the parties to be represented." Cal. Civ. P. Code § 382. State law requirements under California Code of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiffs contend, and Defendants do not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

d. Notice to the Class Complies with California Rule of Court 3.769(f)

The proposed Class Notice meets all of the requirements of California Rule of Court 3.769(f). The proposed Class Notice advises the class of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing.

VI. CONCLUSION

Plaintiffs respectfully request that the proposed settlement be preliminarily approved by the Court, the class be conditionally certified for purposes of settlement only, that the Class Notice be approved, and that a final approval hearing date be set for August 11, 2026.

Date: February 5, 2026

MARA LAW FIRM, PC

Signed: */s/ Carter Cordura*
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