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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

ANGEL CUELLAR, on behalf of himself and all others similarly situated,

Plaintiff,

v.

NEW BERN TRANSPORT CORPORATION, a Delaware Corporation; PEPSI-COLA SALES AND DISTRIBUTION, INC., a Delaware Corporation; PEPSICO, INC., a North Carolina Corporation; and Does 1-10, Inclusive,

Defendants.

Case No. STK-CV-UOE-2024-0008803
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Robert T. Waters
Department 11B

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Date: TBD
Time: 9:00 a.m.
Dept.: 11B

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I. INTRODUCTION

Plaintiff Angel Cuellar ("Plaintiff") seek preliminary approval,[1] under Rule 3.769(c) of the California Rules of Court, of a $999,999.00 non-reversionary Settlement on behalf of approximately 1,780 drivers employed by Defendant New Bern Transport Corporation ("New Bern" or "Defendant") in California between July 25, 2020 and December 3, 2025 excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al.*, Case No. 22-cv-00802 (S.D.N.Y) (the "Class Period").

This is a cash settlement and all Class Members who do not opt out will receive a payment, without a requirement to submit a claim form. In summary, Plaintiff alleges he was required to work off the clock before clocking in, during unpaid meal periods, and after shifts, was not reimbursed for required use of his personal cellphone, was underpaid for sick leave, and had to maintain a company-logo uniform at his own expense without reimbursement.

This case resolved following mediation before experienced wage and hour neutral, Steven Serratore, Esq. Plaintiff argues that Defendant's maximum realistic liability for all of his claims, excluding PAGA penalties,[2] is over **$15,000,000**. This assumes the Class Members would receive compensation for 30 minutes of off-the-clock work <u>every shift</u>, meal premiums for all non-compliant meal breaks, rest break premiums once a week, and monthly business expense reimbursements of $50.

Thus, the $999,999 Gross Settlement Amount represents over **10%** of New Bern's maximum realistic liability for Plaintiff's direct, non-derivative claims, and over **6.57**% for all of Plaintiff's claims, including derivative waiting time and wage statement penalties. This is an excellent result in light of the risks of continued litigation, and within the range of typical class action settlement recoveries.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Angel Cuellar filed a class action complaint on July 25, 2024 in San Joaquin

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[1] This memorandum exceeds the 15-page limit set forth in CRC 3.1113, but Defendant has stipulated to an extension of the page limit to allow Plaintiff to sufficiently present this Settlement including class certification factors for the Court's approval.

[2] The settlement of Plaintiff's PAGA penalties is discussed in Section IV(A)(3), below.

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Superior Court, on behalf of himself and other New Bern's California drivers, alleging claims for: (1) failure to pay minimum and/or regular wages; (2) failure to pay correctly-calculated sick pay; (3) failure to provide rest periods; (4) failure to provide meal periods; (5) failure to reimburse business expenses; (6) failure to provide itemized wage statements; (7) failure to timely pay all wages due upon termination of employment; and (8) unfair competition. Decl. of Maggie Realin ("Realin Decl."), ¶ 2. Plaintiff filed an amended complaint, adding a cause of action under PAGA on September 16, 2024. Plaintiff then agreed to remove his meal and rest period claims as preempted by the Motor Carrier Safety Act's hours-of-service regulations, consistent with *Int'l Bhd. of Teamsters, Local 2785 v. FMCSA* (9th Cir. 2021) 986 F.3d 841, 849, and filed the Second Amended Complaint on December 18, 2024. *Id.*, ¶ 3.

Plaintiff was employed by Defendant in California from approximately May 2012 until August 2023. Plaintiff worked as an hourly, non-exempt salesperson until about 2021–2022, and then as a truck driver delivering Pepsi products in the Stockton area. Decl. of Angel Cuellar ("Cuellar Decl."), ¶ 2. He alleges he generally worked 8–10 hours per day and 10–12 hour shifts three to four times per week.

Plaintiff alleges he was required to clock in using a wall-mounted timeclock and often waited several minutes before doing so, including time spent outside when facility doors were locked. He also alleges he engaged in brief work-related discussions after clocking out, and used his personal cell phone to respond to work communications outside of paid time. Cuellar Decl., ¶¶ 3-5.

Plaintiff further alleges he was required to record meal periods as taken, even when he remained subject to work duties or on-call due to delivery schedules and limited parking availability. He contends that drivers were instructed to keep phones on during meal periods. Cuellar Decl., ¶ 6.

Plaintiff also alleges that New Bern failed to reimburse necessary business expenses, including personal cell phone use and maintenance of required Pepsi-branded uniforms. He also alleges that non-discretionary pay, such as "Recognition/Service Awards," was excluded from the calculation of the regular rate for sick pay. Cuellar Decl., ¶¶ 7-9.

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After some litigation and discovery, the Parties attended a private mediation on September 4, 2025. The case eventually settled. For purposes of settlement, the Parties stipulated to filing a Third Amended Complaint ("TAC"); all claims released in the settlement are alleged in the TAC. Realin Decl., ¶ 4.

III. VIGOROUS PROSECUTION OF THIS ACTION

A. Summary of Investigation and Discovery Conducted

The Parties conducted a thorough investigation of the claims and facts alleged in this action, and Plaintiff analyzed the legal principles applicable to his claims against New Bern. Defendant produced over 25,000 pages of documents and other information in discovery, and a 5% class sample of time and pay records for mediation purposes. Plaintiff engaged an expert to prepare a class-wide damages model. As a result of this careful investigation, the Parties developed a clear understanding of their respective claims and defenses. Realin Decl., ¶ 5.

B. Settlement Reached after Arms-Length Negotiations with Assistance of Experienced Mediator

Plaintiff retained counsel with extensive experience in prosecuting wage and hour class and representative actions. Decl. of Isam C. Khoury ("Khoury Decl."), ¶¶ 3-12; Decl. of David Mara ("Mara Decl."), ¶¶ 3-9; Decl. of Emil Davtyan (Davtyan Decl.), ¶¶ 3-7. Defendant was represented by experienced attorneys at Sheppard Mullin. On September 4, 2025, the Parties mediated this case before Steven Serratore, a mediator with vast experience in wage and hour class actions. After the mediation session, the mediator issued a proposal, which the Parties accepted, resulting in a settlement in principle. Following several additional weeks of negotiations, the Parties finalized the terms of the settlement agreement. Khoury Decl., ¶ 13. The executed version of the Settlement Agreement ("SA") is attached as **Exhibit A** to Khoury Declaration.[3]

C. Summary of the Risks to Further Litigation

Although Plaintiff remains confident in his position, he recognizes several risks in

[3] The Settlement Agreement and Motion was submitted to the LWDA, and proof of submission is attached as **Exhibit B** to Khoury Declaration.

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prevailing on the certification and the merits. Realin Decl., ¶ 6.

As a preliminary matter, in 2019, New Bern resolved a similar action involving its California drivers for $5,000,000 in *Helton v. Pepsi-Cola Sales and Distribution, Inc., et al.*, Case No. 3:17-cv-01135-EMC (N.D. Cal.). That settlement occurred before the Federal Motor Carrier Safety Administration ("FMCSA")'s preemption of California's meal and rest break claims took effect. New Bern will contend that, following *Helton*, it had already implemented measures to address the pay and break practices at issue in the present case, substantially reducing its liability in this action. Realin Decl., ¶ 7.

With respect to Plaintiff's off-the-clock claims, New Bern is expected to argue that its written policies are compliant and expressly prohibit any off-the-clock work, including during meal periods, and that employees are provided with contact information for an anonymous HR hotline to report any violations. Further, New Bern contends that drivers were required by Department of Transportation Regulations to record all on-duty time. New Bern also contends that all drivers were issued company devices capable of clocking in remotely, eliminating any need to wait to use the timeclock inside the building. Additionally, New Bern argues driver shift start times were staggered, thereby reducing or eliminating any alleged delays or lines at the timeclock. Realin Decl., ¶ 8.

Regarding meal and rest period claims, New Bern asserts that these claims are preempted under the FMCSA. New Bern further argues that it had no actual or constructive knowledge of Plaintiff working during breaks, which its policies expressly prohibit. Realin Decl., ¶ 9. Further, a review of a class sample of employee timecards shows 96% of meal breaks are compliant. This is likely insufficient to raise a presumption of liability under *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. *See Smith v. 9W Halo W. OpCo L.P*. (N.D. Cal. Mar. 28, 2025) 2025 U.S. Dist. Lexis 59497, at **10-12 (3.7% shifts showing a missed second meal break insufficient to invoke the *Donohue* presumption).

As to Plaintiff's claim that he was paid sick pay at his base rate rather than his regular rate of pay, New Bern argues that the evidence shows only a single occurrence in which Plaintiff was paid two different hourly rates and received sick pay at the lower rate. According to New

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Bern, this happened because Plaintiff received a raise mid-week and took sick leave during that same week—an exceedingly rare circumstance. Therefore, New Bern will contend that this claim is *de minimis* in value, at best. Realin Decl., ¶ 10.

With respect to unreimbursed business expenses under Labor Code section 2802, New Bern argues that it did not require employees to use personal phones for work, as all drivers were issued company phones. Moreover, if any employee used a personal phone for business purposes, New Bern maintains that it had an internal portal through which employees could submit reimbursement requests. Realin Decl., ¶ 11.

Regarding Plaintiff's claim for unreimbursed uniform maintenance costs, New Bern asserts that it provides each employee with five sets of pants, shorts, and vests, along with one pair of shoes every year, at no cost. Realin Decl., ¶ 12. While employers must provide uniforms, they are only required to cover laundering expenses if the clothing requires "special laundering or care." *See O'Connor v. Starbucks Corp*. (N.D. Cal. July 14, 2008) 2008 U.S. Dist. Lexis 53877, at *10 (finding employer only responsible for cleaning costs if uniforms required special laundering due to heavy soil or color); *Morales v. Paschen Mgmt. Corp*. (C.D. Cal. Sept. 27, 2019) 2019 U.S. Dist. Lexis 208588, at *33 (dismissing claim for reimbursement of standard uniform cleaning costs).

To the extent Plaintiff or other drivers did not request reimbursement for such expenses, New Bern asserts the claim is subject to summary adjudication. *See Hammit v. Lumber Liquidators* (S.D. Cal. 2014) 19 F. Supp. 3d 989, 1001 (granting summary judgment where employee failed to request reimbursement). Realin Decl., ¶ 13.

Finally, Plaintiff's wage statement and untimely wage claims are derivative of his underlying unpaid time, meal, and rest break claims. Realin Decl., ¶ 14. Accordingly, if Plaintiff does not prevail on the underlying claims, the derivative claims will also fail. *See Gomez v. Lincare, Inc*. (2009) 173 Cal. App. 4th 508, 524–25. New Bern asserts that unpaid wages cannot serve as the basis for derivative penalties under *Maldonado v. Epsilon Plastics* (2018) *Inc*., 22 Cal. App. 5th 1308, 1336–37. *Id.*

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D. *Stevens v. PepsiCo* Settlement

The Parties have excluded from the Class Period the seventeen pay periods between December 5, 2021 and April 8, 2022, which are covered by the settlement in *Stevens v. PepsiCo, Inc. et al*., Case No. 22-cv-00802 (S.D.N.Y). The claims in the *Stevens* case arose out of what is commonly referred to as "the Kronos outage" in December 2021, when the Kronos timekeeping system used by New Bern (and other employers), was rendered inoperable due to a ransomware attack directed at the system's vendor.

The *Stevens* settlement is a global nationwide hybrid FLSA/State law common fund settlement, with Class and Collective Members who were employed by a number of entities, including New Bern, "during the seventeen pay periods between December 5, 2021 and April 8, 2022." Realin Decl., ¶ 15. The *Stevens* release covers "any and all claims under state laws relating to or arising out of the Kronos Outage, including, without limitations, all state and local claims for unpaid wages (including, but not limited to minimum wage and overtime), failure to timely pay wages, failure to record hours worked, paystub requirements, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys' fees, costs, expenses, and all other such amount." *Id*.

IV. SUMMARY OF SETTLEMENT TERMS

A. Settlement Relief

Gross Settlement Amount:	$999,999.00. SA, ¶ X.F.
Deductions from the Gross Settlement Amount:	• Attorneys' fees not to exceed 1/3 of the Gross Settlement Amount ($329,999.67). SA, ¶ X.F(d); • Out-of-pocket litigation costs not to exceed $25,000. SA, ¶ X.F(e); • Service Award to Plaintiff not to exceed $10,000. SA, ¶ X.F(b); • PAGA penalties of $50,000 (of which 65% or $32,500 will be paid to the LWDA and 35% or $17,500 to Aggrieved Employees, who are Settlement Class Members employed at any time from July 10, 2023 to December 3, 2025. SA, ¶¶ X.F(f), I.C, I.J, I.L;

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	• Administration costs of approximately $16,990. SA, ¶ X.F(c).
Payout Fund:	Approximately $568,009.33. *See* SA, ¶ X.F.2(b)(1).
Definition of Class Members:	All current and former non-exempt, hourly-paid drivers who worked for New Bern Transport Corporation in California during the Class Period. SA, ¶¶ I.C, I.J.
Class Period:	From July 25, 2020 to December 3, 2025 excluding any weeks covered by the settlement in *Stevens v. PepsiCo, Inc. et al*., Case No. 22-cv-00802 (S.D.N.Y). SA, ¶ I.K.
The number of Class Members and workweeks worked during the Class Period	1,780 Class Members; 241,768 workweeks. Realin Decl., ¶ 16; SA, ¶ X.F.2(b)(2).
The average individual settlement payment	$2.349 per workweek; or approximately $319.05 per Class Member (without accounting for the number of workweeks worked). Realin Decl., ¶ 16.

1. *Settlement Formula and Distribution*

Class Members who do not opt out of the Settlement will receive their respective Settlement Payments from the Payout Fund based on the number of workweeks they worked during the Class Period, without the need to submit a claim form. SA, ¶ X.F.2(b)(2). Distribution amounts will be calculated and allocated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \quad \text{X} \quad \text{Payout Fund} \quad = \quad \text{Class Member's Payment}$$

Id.[4]

Class Members who do not opt out of the Settlement will release Defendant from all claims that relate to the causes of action asserted in this action – or those that could have been asserted in this action based on the facts alleged in Plaintiff's operative TAC. SA, ¶ X.B.

Settlement checks will be valid and negotiable for 140 days. SA ¶ X.B.12 (p. 25). After the expiration of the 140-day period, the total amount of any uncashed settlement checks will be transferred to the California State Controller with the identity of the class member to whom the funds belong, to be held for the class member per the California Unclaimed Property Law,

[4] The PAGA Penalty Payment allocated to PAGA-eligible Plaintiffs will be calculated similarly on a pro rata basis, based on the total amount of pay periods PAGA Employees worked during the PAGA Period. SA, ¶ X.F.2(b)(2).

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pursuant to California Code of Civil Procedure section 384(b). *Id.*, ¶ X.F.2(d).

All Settlement Payments are subject to taxation and will be reported to the IRS and state tax authorities. Twenty percent (20%) of each Class Member's Settlement Payment will be allocated as wages, and eighty percent (80%) will be allocated as penalties and interest, with withholding to apply only to the portion allocated to wages. SA, ¶ X.F.2(b)(3). Class Members shall seek their own tax advice regarding this agreement.

2. *Attorneys' Fees and Costs*

The Parties agreed that, subject to approval by the Court, up to $329,999.67 (one-third) of the Gross Settlement Amount, may be allocated to attorneys' fees, and up to $25,000 may be allocated to reimburse Class Counsel for litigation costs and expenses. SA, ¶¶ X.F(d) and (e). Courts in California wage and hour cases, where the common fund is under $10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 482, 491-92 (citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503. Class Counsel intends to brief the fee application using both methodologies, as cross checks.[5] Any portion of the requested attorneys' fees and costs that are not awarded to Class Counsel shall be part of the Payout Fund distributed to Class Members as provided in the Settlement Agreement. SA, ¶ X.F.2(b)(1).

3. *PAGA Payment to Labor Workforce Development Agency*

The Parties agree $50,000 of the Gross Settlement Amount will be allocated for payment under PAGA. Of this amount, 65% ($32,500) will be paid to the LWDA, and 35% ($17,500) to PAGA-eligible Plaintiffs, who are those Class Members who worked for Defendant from July 25, 2023 to December 3, 2025. SA, ¶¶ X.F(f), I.L. This amount is reasonable because New Bern will argue that the recent PAGA amendments limit Plaintiff's recovery and that any penalties are capped at 15% under Labor Code Section 2699(g). Defendant will contend it took "all reasonable

[5] 33.33% of the awarded attorneys' fees will be allocated to Cohelan Khoury & Singer, 33.33% to D.Law, Inc., and 33.33% to Mara Law Firm. The client consented to this fee split agreement in writing. Khoury Decl., ¶ 18.

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steps" to comply with the law before receiving the PAGA notice, including maintaining lawful wage and hour policies, conducting regular audits, training supervisors, and promptly correcting a minor calculation error. Realin Decl., ¶ 17. Because these compliance measures were in place prior to the notice, Defendant will argue that it qualifies for the 15% cap. Thus, the PAGA penalties to be paid under this Settlement represent 1.6% of the total potential maximum PAGA penalties for Plaintiff's direct claims, assuming class members could prove they suffered four types of violations in <u>every single</u> pay period (52,089 pay periods) times $100, multiplied by 4 penalties for unpaid wages, meal breaks, rest breaks, and unreimbursed expenses per pay period times 15% = $<u>3,125,340).</u> *Id.* The subsequent penalties should be calculated at $100, not $200 per pay period because under *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, for a plaintiff to recover $200 per subsequent violation an employer must have been cited first, which has not occurred in this action. *Id*. at pp. 1207-09; *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal. App. 5th 334, 356 ("the increased $200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *see also Hernandez v. Best Buy Stores, LP* (S.D. Cal. June 6, 2017) 2017 WL 2445438, at *2 (holding, based on *Amaral*, that $100 penalty per pay period is warranted because "no court, commissioner, or any other authority had held [that] Best Buy misclassified" the general managers."); *Trang v. Turbine Engine Components Technologies Corp.* (C.D. Cal. Dec. 19, 2012) 2012 WL 6618854, *5 ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"); *Amalgamated Transit Union Local* 1309, *AFL-CIO v. Laidlaw Transit Services, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 (finding that California law imposes the "subsequent violation penalty" only after an employer has been notified by "the court or commissioner" that its conduct violates the Labor Code).

This allocation of the PAGA penalties falls within the range of other approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 528 (awarding

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PAGA penalties of 0.2% of the maximum, or $5 per pay period); *Ruch v. AM Retail Grp., Inc.* (N.D. Cal. Sept. 28, 2016) 2016 WL 5462451, at *2, *7 (settlement allocating $10,000 to PAGA penalties where potential value was over $5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 WL 3670787, at *10 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP* (N.D. Cal. July 25, 2017) 2017 WL 3834873, at *2 (finding that "$7,500 PAGA payment is reasonable when measured against the total overall settlement [of $345,000] and the possible weaknesses in Plaintiffs' case."); *see also Bravo v. Gale Triangle, Inc.* (C.D. Cal. Feb. 16, 2017) 2017 WL 708766, at *19 ($10,000 as PAGA penalties found reasonable).

4. ***Settlement Administration Costs***

The Parties selected Apex Class Action LLC ("Apex") as the Settlement Administrator in this action. SA, ¶ X.B.4(b) (p. 19). The Parties obtained bids from three settlement administrators, and Apex's was the most competitive bid. Khoury Decl., ¶ 14. The costs of the Administrator, estimated at $16,990, will be deducted from the Gross Settlement Amount. SA, ¶ X.F(c); Declaration of Sean Hartranft of Apex, ¶ 7.

5. ***Class Representative's Service Award***

Defendant agreed, subject to Court approval, to pay up to $10,000 from the Settlement Amount as a service award to Plaintiff for his services as the class representative. SA, ¶ X.F(b). Any portion of the requested service award not awarded to Plaintiff shall be part of the Payout Fund, and shall be distributed to Settlement Class Members as provided in this Agreement. SA, ¶ X.F.2(b)(1).

B. Settlement Administration

Within 21 calendar days after the preliminary approval, Defendant will provide Apex with a class list containing Class Members' contact information and their weeks worked within a covered position, as well as applicable Workweek Totals. SA, ¶ X.B.4(a) (p. 19). Within 30 calendar days thereafter, Apex will mail a Class Notice to each Class Member as provided in this Settlement. *Id.*, SA, ¶ X.B.4(c) (p. 20). Apex will determine the eligibility for, and the amounts

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of, any Settlement Payments under the terms of the Agreement, calculating the amount of the Individual Settlement Awards and all payroll tax deductions to be withheld, processing and distributing Class Members' payments, submitting the LWDA's portion of the PAGA payment to the LWDA, and processing and mailing tax payments to the appropriate state and federal taxing authorities. *Id*., ¶ X.B.4(b) (pp. 19-20). Further, Class Members will also be able to contact the Settlement Administrator by telephone or e-mail, if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. 1** to SA. Also, any objections to or opt outs from the Settlement must be delivered to the Settlement Administrator. SA, ¶ X.B.5 (pp. 21-22).

V. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA

There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for Justice v. Civil Serv. Comm'n of San Francisco* (9th Cir. 1982) 688 F.2d 615 625. The trial judge exercises discretion in deciding whether to grant preliminary approval of a class action settlement and "great weight is accorded to [the] judge's views." *7-Eleven Owners for Fair Franchising v. Southland Corp*. (2000) 85 Cal. App. 4th 1135, 1145.

Preliminary approval is the first of three steps of the settlement approval process, followed by notice to the class and a final approval hearing. *See* Manual for Complex Litigation, Second, ¶ 30A4 (1993). The court does not need to perform a final analysis of the settlement's fairness to preliminarily approve a proposed settlement. Rather, a more detailed assessment is reserved for the final approval hearing, after class notice has been sent and class members have had the opportunity to object to or opt-out of the settlement. *See* Moore's Federal Practice, 23.165[3] (3d ed. 2005). Generally, there is an initial presumption of fairness when a proposed settlement, which was negotiated at arms'-length by Class counsel, is presented for court approval. 4 Newberg on Class Actions (4th ed. 2002), ¶ 11.41, p. 90. In approving a settlement where the class has not yet been certified, the court must first determine that a class exists. *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 613, 619-20 (commonality must be shown at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

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A. Settlement Amount Calculations – *Kullar* analysis

Defendant denies all wrongdoing and liability, asserts full compliance with applicable state and federal wage-and-hour laws and policies (including payment of all wages, provision of meal and rest periods, and prohibition of off-the-clock work), notes no class has been certified, contends meal and rest break claims are federally preempted, and maintains Plaintiff's claims require individualized inquiries that defeat class certification.

According to Defendant's records, Class Members collectively worked approximately 241,768 workweeks as of the date of mediation. The average hourly rate is $30.64. Realin Decl., ¶ 18. Plaintiff has calculated Defendant's maximum exposure as follows:

Unpaid Time Claim: **$7,096,354.22**.[6] This is based on Plaintiff's estimate Class Members worked about 30 additional minutes per shift. Thus, New Bern's exposure for unpaid wages is $14,192,708.44 (463,208.50 total unpaid hours times $30.64 hourly rate). However, this claim should be discounted by at least 50%[7] to account for the risks associated with class certification, given that Defendant denies all liability, and maintains its policies prohibit off-the-clock work and there is no electronic evidence supporting such work—only anecdotal accounts. This results in a realistic exposure of $7,096,354.22. Realin Decl., ¶ 19.

Meal Break Claim: **$11,353.65**. Where data shows a 4% violation rate, New Bern's exposure for unpaid meal break premiums is as follows: 37,055 unique violations times $30.64 = $1,135,365.2. However, because this claim is preempted by the FMCSA, Defendant argues the claim should be valued at zero. Plaintiff discounts it by 99%, to result in New Bern's nominal exposure for unpaid meal break premiums at $11,353.65. Realin Decl., ¶ 20.

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[6] This calculation also includes nominal exposure for Plaintiff's split shift and reporting time claims, as the documents produced by New Bern contain no evidence of any policy or uniform practice of scheduling split shifts, nor any evidence of unpaid reporting time. Realin Decl., ¶ 19.

[7] Settlements are routinely approved as fair and reasonable when the maximum valuation is substantially discounted to account for the class certification and merits risks. *See e.g., Milburn v. PetSmart, Inc*. (E.D. Cal. Oct. 29, 2019) 2019 WL 5566313, at *4 (approving settlement as fair and reasonable where plaintiff applied forty to fifty percent discount each for class certification and risks on the merits); *see also Galvan v. Superior Tank Co Inc*. (C.D. Cal. July 19, 2016) 2016 WL 11502115, at *7 (approving settlement as fair and reasonable where maximum valuation was discounted for the risk of non-certification, i.e. the rest period claim was discounted *by 85% for a risk of non-certification and by 65% on the merits*).

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Rest Break Claim: **$56,770.83**. Plaintiff estimates he was not able to take a rest break once a week. Thus, New Bern's realistic exposure for unpaid rest break premiums is 926,417 shifts over 3.5 hours times $30.64 divided by 5 = $5,677,083. However, because this claim is preempted by the FMCSA, Defendant argues the claim should be valued at zero. Plaintiff discounts it by 99%, to result in New Bern's nominal exposure for unpaid rest break premiums at $56,770.83. Realin Decl., ¶ 21.

Unreimbursed Business Expenses Claim: **$2,305,620**. Plaintiff estimates he was owed $40 per month ($10 per workweek) in cellphone reimbursement, and $10 per month ($2.5 per workweek) for uniform maintenance, for a total of $50 in unreimbursed monthly expenses (or $12.5 per workweek). Thus, Plaintiff calculates Defendant's total potential exposure under the Section 2802 claim is $2,882,025 (based on 230,562 workweeks at $12.50 per workweek). Plaintiff has reduced this amount by 20% to account for the portion attributable to uniform maintenance expenses, as New Bern provided uniforms to class members and did not require any special cleaning procedures. Accordingly, New Bern's estimated exposure for the Section 2802 claim is $2,305,620. Realin Decl., ¶ 22.

Sick Pay Claim: **$7,811.32**. In the pay period ending January 21, 2023, Plaintiff received sick pay at a rate of $28.62 per hour, but he alleges his regular rate was $31.45 per hour, resulting in an underpayment of $2.83 per hour. Extrapolated across the class, this would yield a potential exposure of $781,132 (based on 276,018 total sick hours taken by class members multiplied by $2.83). However, Plaintiff has assigned his claim only a nominal value and discounted by 99%, as the underpayment resulted from a unique circumstance in which Plaintiff received a mid-week raise and took sick leave during that same week—an exceedingly rare situation not reflected in the broader class data. Accordingly, New Bern's estimated exposure for this claim is $7,811.32. Realin Decl., ¶ 23.

Wage Statement Penalties Claim: **$2,362,000**. This is based on 1,181 Class Members and 52,089 pay periods during the applicable limitations period, with $50 for the initial violation per employee ($50 × 1,181 employees = $59,050) plus $100 for each subsequent violation (($100 × 50,908 pay periods (52,089 total pay periods – 1,181 initial pay periods) = $5,090,800)), resulting

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in a total exposure of $5,149,850. However, this amount equates to an average recovery of $4,360.58 per employee, which exceeds the statutory cap of $4,000 per employee. Accordingly, Plaintiff has calculated New Bern's total exposure for this claim to $4,724,000 ($4,000 × 1,181 class members). Plaintiff has discounted further by 50% to account for the fact this is a purely derivative claim, resulting in a realistic exposure of $2,362,000. Realin Decl., ¶ 24.

Waiting Time Penalties Claim: **$3,361,153.50**. Plaintiff calculated daily wages for approximately 708 former employees at $326.51 (10.33-hour shift length at $30.64/hour), times 30 days, for a total of $6,722,307. Realin Decl., ¶ 25. It should be further discounted by 50% to account for the fact this is a purely derivative claim, resulting in a realistic exposure of $3,361,153.50. *Id.*

Based on these figures, Plaintiff asserts this settlement represents **10.55%** of New Bern's maximum realistic exposure for Plaintiff's direct, non-derivative claims, and **6.57%** of New Bern's potential total liability for all of Plaintiff's claims. This result is well within the range of – and exceeding - settlements commonly approved by California state and district courts. Realin Decl., ¶ 26; *See also* Section V(B)(2) below for a detailed explanation.

B. The Proposed Settlement is Fair, Adequate, and Reasonable

The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, *citing Officers for Justice*, 688 F.2d. at p. 625. The "fair, reasonable and adequate" test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.* (2006) 141 Cal.App.4th 46, 61. In the absence of California law, the court might follow the federal authority. However, California courts have never adopted Rule 23 as "a procedural strait jacket;" to the contrary, trial courts have been urged to be flexible in dealing with class actions. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240, *citing Cartt v. Super. Ct*. (1975) 50 Cal.App.3d 960, 970, n.16. Generally, the opinions of counsel should be given considerable weight because of counsel's familiarity with the litigation, and previous experience with cases such as this one. *Officers for Justice,* 688 F.2d at p. 625. "We note that… settlement [is] the preferred means of dispute resolution…especially in complex class action litigation." *7-Eleven*

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Owners, 85 Cal.App.4th at p. 1151.

At the preliminary approval stage, the Court considers if:

> (1) the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with the range of possible approval.

In re Tableware Antitrust Litig. (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079 (citing Manual for Complex Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

1. *The Settlement is the Product of Serious, Informed and Noncollusive Negotiations*

This Settlement is the result of extensive and hard-fought negotiations. Khoury Decl., ¶ 15. Plaintiff's counsels' law firms specialize in wage and hour class action litigation, and Defendant was represented by experienced attorneys at Sheppard Mullin. *Id*., ¶ 16.

Class Counsel analyzed New Bern's document production and diligently investigated Class Members' claims. Realin Decl., ¶ 5; Section III(A), *supra*. Defendant produced policies, handbooks, data points, and a 5% class sample of time and pay records. Realin Decl., ¶ 5.

The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses of their respective positions. *See Adams v. Inter-Con Sec. Sys., Inc*. (N.D. Cal. Oct. 30, 2007) 2007 WL 3225466, at *3 (preliminarily approving the settlement agreement after finding it was reached through extensive negotiations and plaintiff's counsel's thorough investigation of the claims); *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116, 129-130 (trial court should have sufficient information about the potential value of the case and litigation issues to independently review the reasonableness of the settlement.).

Before this action settled, the Parties participated in mediation before an experienced neutral. Khoury Decl., ¶ 13; Section III(B), *supra*. That indicates the settlement was free of collusion. "The assistance of a well-respected mediator with substantial experience in employment litigation…supports approval of the settlement." *Murillo v. Pac. Gas & Elec. Co*. (E.D. Cal. 2010) 266 F.R.D. 468, 479; *Dunk*, 48 Cal.App.4th at pp. 1802-03.

The Parties have been cooperative, yet aggressive, and displayed capable and experienced

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advocacy on both sides. Accordingly, "[t]here is … every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply Sys. Sec. Litig*. (D. Ariz. 1989) 720 F.Supp. 1379, 1392.

2. *The Settlement has no "Obvious Deficiencies" and Falls within the Approval Range*

"[T]he very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at p. 624 (quoting *Cotton v. Hinton* (5th Cir. 1977) 559 F.2d 1326, 1330). Thus, when evaluating the amount offered in settlement, the Court should consider "the complete package taken as a whole," and the amount should "not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Id*. at pp. 625-28.

(i) The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements

Courts routinely approve class action settlements where the settlement amount is a lower percentage of the claimed amount of damages. *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) 2015 WL 3776765, at *4 (approving settlement representing 10% of potential value); *see also Thomas v. Cognizant Tech. Sols. U.S. Corp.* (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final approval in wage and hour action for settlement between 4.4% and 5% of maximum liability); *Villegas v. J.P Morgan Chase & Co.* (N.D. Cal. Nov. 21, 2012) 2012 WL 5878390, at *6; *In re MyFord Touch Consumer Litig.* (2019) 2019 WL 1411510, at *10 (6% of valuation); *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. 2014) 303 F.R.D. 611, 623-24 (settlement between 9% and 27% of total potential liability fair, adequate and reasonable given the uncertainty of continued litigation); *In re Mego Fin. Corp. Sec. Litig*. (9th Cir. 2000) 213 F.3d 454, 459 (16.67% of potential recovery adequate in light of plaintiff's risks). Simply put, "the fact that a proposed settlement may only amount to a fraction of the potential recovery does not mean that [it] should be disapproved." *7-Eleven Owners,* 85 Cal.App.4th at 1150, citing *Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242.

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Here, the Settlement represents **10.55%** of Defendant's maximum realistic liability for Plaintiff's direct claims, and **6.57%** of Defendant's maximum realistic liability for all of Plaintiff's claims, without any risks, costs, and uncertainty of prolonged litigation. Realin Decl., ¶ 26. Without accounting for the length of each Class Member's employment with Defendant, a Class Member will recover on average **$319** as a result of this settlement, or $2.35 per workweek. *Id.*, ¶ 16. This is a fair result, well within the range of approved settlement payments. *See e.g.*, *Villegas v. J.P Morgan Chase & Co.* (N.D. Cal. Nov. 21, 2012) 2012 WL 5878390, at *2, *6 (approving settlement with approximately $255 settlement payment per class member).

(ii) The Formula of Allocation based on Workweeks is Fair and should be Approved

Class Members will receive a portion of the Gross Settlement Amount based on the number of workweeks they worked for New Bern during the Class Period. This formula is realistic because Class Members' individual recovery is proportionate to the amount of time the Class Members worked for Defendant. Realin Decl., ¶ 27. As discussed in Section III(C), *supra*, when considering the substantial risks in further litigation and that a $999,999 verdict would not otherwise have been attainable, the substantial recovery for class members is reasonable. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at p. 458; *Sandoval v. Tharaldson Emple. Mgmt.* (C.D.Cal. June 15, 2010, No. EDCV 08-482-VAP (OPx)) 2010 U.S.Dist.LEXIS 69799, at *7.

3. *The Settlement does not Improperly Grant Preferential Treatment to the Class Representative or Segments of the Class*

Class Representative will receive $10,000 for his time and efforts in representing the Class. SA, ¶ X.F(b). "Incentive awards [for class representatives] are fairly typical in class actions." *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393, citing *Rodriguez v. West Publ'g* (9th Cir. 2009) 563 F.3d 948, 958. California courts agree that class representatives are entitled to such an award. *Cellphone Termination*, 186 Cal.App.4th at p. 1394. "Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls, which are

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reimbursable." *Clark v. Am. Residential Servs*. (2009) 175 Cal.App.4th 785, 804, citing *Matter of Cont'l Ill. Sec. Litig*. (7th Cir. 1992) 962 F.2d 566, 571.

Here, the service award to Plaintiff is based on the extent of Plaintiff's participation in this action and not conditioned upon Plaintiff's support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.* (2013) 715 F.3d 1157, 1165. Throughout this action, Plaintiff assisted in investigation, participated in multiple call conferences with counsel, provided and reviewed documents and pleadings, and was on standby during mediation. *See* Cuellar Decl., ¶¶ 14-16.

Courts award incentive awards in this range. *Ross v. U.S. Bank Nat'l Ass'n* (N.D. Cal. Sept. 29, 2010) 2010 WL 3833922, at *3 (approving an award of $20,000 to each of four named plaintiffs based on their contributions to litigation and the risk that being a class representative would harm their reputation); *see also Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal., Sept. 14, 2017) 2017 WL 4071293, at *19 ($15,000 incentive awards for each of the named plaintiffs awarded); *Low v. Trump University, LLC* (S.D. Cal. 2017) 246 F.Supp.3d 1295, 1316 ($15,000 incentive award approved where plaintiffs "devoted significant amounts of time and energy" to the action); *Glass v. UBS Fin. Servs*. (2007) 2007 WL 221862, at *17 ($25,000 for each class representative in wage and hour action). Thus, the proposed service award is reasonable.

4. *The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval of the Settlement*

"A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D. 523, 527. However, the settlement can be approved even in the absence of any discovery, if other factors are satisfied. *In re TD Ameritrade Account Holder Litig*. (N.D. Cal. Sept. 13, 2011) 2011 WL 4079226, at *6. The bottom line is that "the parties have sufficient information to make an informed decision about the settlement." *Durham v. Cont'l Cent. Credit, Inc*. (S.D. Cal. Jan. 10, 2011) 2011 WL 90253, at *3, citing *Linney*, 151 F.3d at p. 1239.

Here, the Parties developed a comprehensive understanding of their respective claims and

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defenses prior to settlement, through both written discovery and the informal exchange of information for mediation purposes. *See* section III(A), *supra*; Realin Decl., ¶ 5. Specifically, Class Counsel had investigated Class Members' claims, examined documents and data, and prepared a damage model. *Id*. As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the settlement with Defendant is fair, reasonable, adequate, and in the best interest of the Class. *Young v. Polo Retail, LLC* (N.D. Cal. Mar. 28, 2007) 2007 WL 951821, at *4.

C. The Proposed Class Meets the Qualifications for Certification for Settlement Purposes[8]

To prevail on a motion for class certification, a plaintiff needs to show that "the question is one of a common or general interest, of many persons, or…the parties are numerous, and it is impracticable to bring them all before the court." Cal. Code of Civ. Proc. § 382. The party seeking certification needs to prove that the class is both ascertainable and that there is a well-defined community of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 326. In *Sav-On Drug Store*, the court adopted a test for "community of interest," which consists of the following prongs: (1) there are predominant common questions of law or fact; (2) class representatives have claims typical to those of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

1. *An Ascertainable and Numerous Class Exists that can be Determined from Payroll Records*

A class is ascertainable when: (i) under the class definition the members are clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of time and money. *See Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274-75; *Sevidal v. Target Corp*. (2010) 189 Cal.App.4th 905, 919-20. Typically, class members are ascertainable when they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc*. (2011) 195 Cal.App.4th 807, 828; *Sevidal*, 189

[8] Defendant agrees to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. SA, ¶ X.A.

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Cal.App.4th at p. 919.

Here, the Class is composed of approximately 1,780 current and former drivers of Defendant in California, who can be identified and located from Defendant's business records. Defendant will provide the Settlement Administrator with a database with all Class Members' names, contact information, and the number of relevant workweeks, and further steps will be taken to locate the Class Members for whom the addresses are not current. SA, ¶ X.B.4(b)-(c) (pp. 19-20); *see also* Section VI, *infra*. Numerosity is satisfied, and the class is ascertainable.

2. *Common Issues of Law and Fact Predominate over any Individual Issues*

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1022. The court only determines whether or not "the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." *Sav-On Drug Stores*, 34 Cal.4th at p. 327.

Here, common issues of fact and law predominate because the California statutes relating to each of Plaintiff's claims, and Defendant's defenses thereto, apply with equal force and effect to all Class Members. Factually, Plaintiff contends that Defendant's policies and practices apply class-wide, and Defendant's liability can be determined by facts common to all members of the Class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. *See also* Cuellar Decl., ¶¶ 3-10, 13.

A class action is superior to numerous individual actions, and the maintenance of this action as a class action will save judicial resources, and help avoid inconsistent judgments. *See Savon Drugs*, 34 Cal.4th at p. 326. Class Members' interests are relatively small, so they are unlikely to prosecute separate actions. Plaintiff's claims arise from his work for Defendant in California.

3. *Plaintiff's Claims are Typical of the Claims of Class Members*

Typicality does not mean that the interests of representative plaintiffs must be identical

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to those of the absent class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46; *Staton v. Boeing Co*. (9th Cir. 2003) 327 F.3d 938, 957. They only need to be "reasonably co-extensive with those of absent class members." *Parsons v. Ryan* (9th Cir. 2014) 754 F.3d 657, 685. Further, the representative plaintiff must be a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn*. (1971) 5 Cal.3d 864, 875.

Here, Plaintiff's claims arise from the same facts and legal theories as the Class Members' claims. Plaintiff is a member of the class of non-exempt drivers of New Bern in California, and subject to the same policies and practices of New Bern with respect to timekeeping, pay, meal and rest breaks, and expense reimbursement. *See also* Cuellar Decl., ¶ 2, attesting that his claims are typical of the claims of absent Class Members. Thus, typicality is met.

4. *Plaintiff and Class Counsel will Adequately Protect the Interests of the Class*

The adequacy of representation involves two conditions: the named plaintiff must be represented by counsel qualified to prosecute class actions of this type; and the named plaintiff's interests cannot be antagonistic to those of the class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.

Here, Plaintiff retained counsel with extensive experience in prosecuting wage and hour class and representative actions. Khoury Decl., ¶¶ 3-12; Mara Decl., ¶ 3-9; Davtyan Decl., ¶ 3-7. In addition, Plaintiff has the same interests as the rest of the Settlement Class, because he was allegedly injured in substantially the same manner. Cuellar Decl., ¶¶ 2, 11. Thus, the Court should certify Plaintiff's class claims for the purposes of this Settlement.

VI. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED

A. Proposed Notice Plan

Within 30 calendar days after receiving Class List from Defendant, the Settlement Administrator will send Class Notice to Class Members via first class mail. SA, ¶ X.B.4(c) (p. 20). Before mailing the Notice, one National Change of Address ("NCOA") search will be performed on Defendants' records to ascertain updated contact information for all Plaintiffs. *Id*. Any Notices returned to the Settlement Administrator as non-delivered before the Notice Deadline Date specified below shall be sent to the forwarding address affixed thereto within three

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(3) business days of receiving notice that a Notice was undeliverable. *Id*. If no forwarding address is provided, then the Settlement Administrator shall attempt to determine a correct address by using a single computer or other search using the social security number of the individual involved and shall forward the Notice to the correct address. *Id*. The Objection/Exclusion Deadline Date shall be extended by seven (7) calendar days if the Notice was re-mailed as provided in this section. *Id*.

The Class Notice will summarize the terms of the Settlement Agreement, advise the Class Members of their estimated individual settlement payment(s), and inform Class Members of their right to object to or exclude themselves from the Settlement within 35 calendar days after the Notice mailing. SA, **Ex. 1**. Because this is a California-only class, and the mailing will occur only in California, 35 days to opt out from or object to the Settlement is sufficient. Khoury Decl., ¶ 17. Further, because Class Members worked as drivers throughout California locations, communicating with New Bern and others in English, English-only notice is sufficient. *Id.*

B. The Proposed Notice to the Class is Fair and Adequate

The Parties agreed on the language of the proposed class notice. Khoury Decl., ¶ 13. If the Court concludes after a preliminary evaluation of the settlement that the relief offered and notice provided are fair and adequate, the Court should order that the class notice be provided. Manual for Complex Litig., Second, § 21.632 at 321. The threshold requirement regarding the sufficiency of class notice is whether the means proposed for distributing the notice are reasonably calculated to apprise the class of the pendency of the action, the proposed settlement, and the right to opt out of or object to the settlement. *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173; *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 315; *see also* Cal. Rules of Court, Rule 3.766.

Here, the Notice is more than sufficient, because it gives Class Members, in an easy to understand and clear language: (1) basic information about this action and the Settlement; (2) an estimate of the weeks Class Members worked during the Class Period, and an explanation how Class Members can dispute this calculation; (3) an explanation how the payout from the Settlement will be calculated for each Class Member, and an estimate of a Class Member's

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Settlement Payment(s); (4) an explanation how Class Members can exercise their right to opt-out from, or object to, the Settlement; (5) an explanation that any claims against the Defendant that could have been litigated in this Action will be released if the Class Member does not opt out; (6) name of Class Counsel and information regarding attorneys' fees and costs; (7) the date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing; and (8) the telephone and e-mail number, as well as website address, where Class Members can obtain additional information. *See* SA, Ex. 1 (proposed Class Notice).

Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the California Rules of Court, Rules 3.766 and 3.769(f).

VII. CONCLUSION

For the foregoing reasons, Plaintiff's unopposed motion should, respectfully, be granted.

Respectfully submitted,
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Dated: February 12, 2026

By:____________________________
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