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11 on behalf of himself, all others similarly situated,
12 and on behalf of the general public.

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15
16 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

17 ADAN MENDOZA, on behalf of
18 himself, all others similarly situated, and
19 on behalf of the general public,

20 Plaintiffs,

21 v.

22 ELITE FUELS TRANSPORTATION,
23 INC.; and DOES 1-100,

24 Defendants.

Case No. CIVSB2427100

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Date: January 5, 2026

Time: 8:30 a.m.

Judge: Hon. Jeffrey R. Erickson

Dept.: S14

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I. INTRODUCTION

Plaintiff Adan Mendoza (“Plaintiff”), on behalf of himself and the approximately 121-member putative class,¹ respectfully requests that this Court preliminarily approve the Joint Stipulation and Settlement Agreement (hereinafter “Agreement”²) entered into between Plaintiff and Defendant Elite Fuels Transportation, Inc. (“Defendant”) (collectively, Plaintiff and Defendant are the “Parties”). The Agreement seeks to resolve claims against Defendant in this matter in exchange for a non-reversionary \$370,000 Gross Settlement Amount. The proposed Class is comprised all current or former hourly drivers, delivery drivers, truck drivers, truck workers, or similar job designations covered by, *inter alia*, California IWC Occupational Wage Order No. 9-2001, and Title 8, *California Code of Regulations*, section 11110, who drove for Defendant and who spent a majority of their work time in California and/or had their base of operations in California from August 1, 2023 through September 14, 2025. (Ex. 1 at 5).

It is requested that the Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the claims and Defendant’s potential liability exposure, this proposed settlement of \$370,000 is within the range of reasonableness. This settlement is estimated to pay Class Members an average payment of \$1,666.67. The proposed Agreement satisfies all the criteria for preliminary approval. Accordingly, Plaintiff seeks: (1) preliminary approval of the terms of the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC as Class Counsel; (5) approval of the Parties’ Notice of Class Action Settlement³ (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

Defendant transports and delivers fuel and other hazardous materials for its customers in California. In order to carry out its business, Defendant employs truck drivers, like Plaintiff. Plaintiff submitted his Notice of Labor Code Violations to the LWDA on August 28, 2024. On September 5, 2024, Plaintiff filed this class action complaint, alleging various wage and hour

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 Class Notice is attached to the Agreement as **Exhibit A**.

1 violations on behalf of similarly situated drivers for Defendant including: (1) failure to pay all
2 straight time wages; (2) knowing and intentional failure to comply with itemized wage statements;
3 (3) failure to pay all wages due at termination; (4) failure to reimburse business expenses; and (5)
4 violation of unfair competition law. On or around November 4, 2025, Plaintiff filed a First
5 Amended Complaint in this matter to adding a cause of action under PAGA for the aforementioned
6 wage and hour violations. Mara Dec. ¶ 10.

7 **III. INVESTIGATION AND LITIGATION HISTORY**

8 **a. Discovery and Investigation**

9 The Parties conducted significant investigation and discovery of the facts and law. Through
10 informal discovery, Defendant produced relevant policy documents that covered drivers'
11 employment with Defendant, such as driver handbooks and Defendant's wage and hour policies.
12 Defendant also produced a sampling of time and wage records for Class Members. Plaintiff also
13 requested, and Defendant produced, employee data points, such as the number of Class Members
14 and the number of workweeks worked by Class Members during the relevant time period, to
15 establish a potential exposure model in preparation for mediation. From this discovery and data,
16 Plaintiff and his Counsel were able to analyze Defendant's liability and prepare a realistic damage
17 model. Mara Dec. ¶ 11.

18 **b. The Parties Agreed to Attend Mediation**

19 The Parties attended an all-day mediation with respected mediator Doug Leach on
20 February 19, 2025. Though the matter did not settle at that time, the Parties agreed to schedule a
21 second mediation with Mr. Leach on June 25, 2025 to permit Defendant time to gather additional
22 documents and data for the Parties to evaluate. The arms-length settlement discussion at this
23 second mediation ultimately resulted in settlement. The Parties then met and conferred over all the
24 terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek
25 preliminary approval of the Agreement in the instant motion. Mara Dec. ¶ 12.

26 **c. The Parties' Staunchly Conflicting Positions**

27 **i. Unpaid Wages**

28 Plaintiff contends that Defendant consistently and systematically failed to pay Plaintiff and

1 Class Members for all “hours worked,” as that phrase is defined in the Wage Order and interpreted
2 by California courts. Hours worked is defined in Wage Order 9-2001 as “the time during which an
3 employee is subject to the control of an employer, and includes all the time the employee is
4 suffered or permitted to work, whether or not required to do so.” Wage Order 9-2001, Subd. 2(H);
5 *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. In *Mendiola*, the
6 California Supreme Court reiterated that an employee’s standby time may require compensation.
7 *Id.* at 833. Mara Dec. ¶ 13.

8 Following *Mendiola*, Plaintiff contends that he and other drivers are not paid for all time
9 they work and are subject to Defendant’s control because they must frequently wait for their
10 assigned truck to arrive due to delays, but that they are not paid for this time. The drivers operate
11 Defendant’s fleet trucks around the clock, where one set of drivers will drive the fleet for the first
12 half of the day, and another set of drivers operating that same fleet the second half of the day.
13 However, Plaintiff contends, that he and other drivers are routinely forced to endure significant
14 delays and must wait long periods of time before their assigned truck arrives, without pay. Many
15 times drivers learn of the delay when they arrive at the terminal and have to wait it out there until
16 the truck arrives. Even when drivers are notified before they arrive at the terminal when they are
17 nonetheless instructed to be ready to go whenever they get a call from dispatch to come to the
18 terminal. In either of the scenarios, drivers are engaged by the company to wait for the trucks to
19 come in. They are not free to use this time effectively for their own purposes, as they must be ready
20 to be at the terminal when their truck arrives and continually check back with dispatch to obtain
21 updated ETAs. Mara Dec. ¶ 14.

22 Defendant wholly disputes this and claims that it does pay drivers for all time worked.
23 Defendant contends, drivers are in no way subject to Defendant’s control if a truck is delayed.
24 Defendant asserts that drivers are not expected to perform any work during this time, that they are
25 not required to be on site, and that they are entirely free to do whatever they want prior to the
26 assigned truck arriving. Moreover, Defendant argues that it can provide declarations from
27 individual drivers verifying that they were not subject to Defendant’s control during this time and
28 that whatever they did during this time was entirely up to them. Further Defendant argues that this

1 issue is highly individualized and varies significantly amongst Class Members. Defendant asserts
2 that, amongst other things, the Court would have to ask each driver for each individual shift
3 whether there was any delay, how long the delay was for (if any), when they were notified of the
4 potential delay, and whether they were subject to the control of Defendant during this alleged
5 waiting period or whether they were free to do whatever they pleased. Defendant contends that
6 these individualized issues would undeniably predominate any trial and render it unmanageable.
7 Therefore, Defendant maintains that Plaintiff's unpaid wages claim could be defeated both at class
8 certification and on the merits. Mara Dec. ¶ 15.

9 **ii. Reimbursements**

10 Plaintiff claims that Defendant fails to reimburse employees for business expenses. Under
11 Labor Code section 2802, the employer must "indemnify its employees for expenses they
12 necessarily incur in the discharge of their duties[.]" The California Supreme Court in *Gattuso v.*
13 *Harte-Hanks Shoppers, Inc.*, makes clear that the goal of section 2802 is "to prevent employers
14 from passing on their operating expenses to their employees." *Gattuso v. Harte-Hanks Shoppers,*
15 *Inc.* (2007) 42 Cal. 4th 554, 569-71. Plaintiff argues that Defendant requires drivers to use their
16 personal cell phones for business purposes. Plaintiff contends that Defendant requires drivers to
17 remain in constant contact throughout the workday through the drivers' personal cell phones in
18 order to provide updates about things such as driver location and delivery status. Despite this,
19 Defendant fails to reimburse employees for the costs associated with the use of their cell phones.
20 Mara Dec. ¶ 16. Defendant contends that it has never required employees to use their personal cell
21 phone for business purposes. Defendant further contends if drivers decided to use their personal
22 cell phones for business purposes, it was solely that driver's choice and not the result of any
23 purported mandate by Defendant. Mara Dec. ¶ 17.

24 **iii. Wage Statements**

25 Plaintiff alleges Class Members are not provided with accurate itemized wage statements
26 in violation of California Labor Code § 226. This claim is derivative of Plaintiff's unpaid wages
27 claims. Should Plaintiff's unpaid wages fail, these claims would also fail. Mara Dec. ¶ 18.
28 Defendant disputes this. Defendant claims that it properly totaled the hours worked on wage

1 statements. As such, Defendant contends its wage statements were lawful. Further, Defendant also
2 asserts that any violation of California Labor Code § 226 was not “knowing and intentional.” *See*
3 Cal. Lab. Code § 226(e); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195;
4 *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1065. Defendant maintains
5 that it reasonably and in good faith believes that it was providing a complete and accurate wage
6 statement in compliance with California law. Defendant further contends that drivers cannot show
7 that they have suffered an injury because of any potential violation of California Labor Code §
8 226. Defendant contends that drivers knew to talk to their supervisor if they had any questions or
9 concerns with their wage statements. As such, disputes exist as to whether Defendant’s wage
10 statements violated California Labor Code § 226(a), whether any such violation was knowing and
11 intentional, and whether employees suffered an injury. Defendant also relies on the case
12 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that employees
13 do not suffer injury under California Labor Code § 226(a) so long as the wage statements correctly
14 reflected the hours worked and the pay received even if the pay is later determined to be inaccurate.
15 Mara Dec. ¶ 19.

16 **iv. Waiting Time Penalties**

17 Plaintiff also contends that Defendant failed to pay employees their final wages within the
18 timeframes outlined by California law pursuant to Labor Code § 203. This claim is derivative of
19 Plaintiff’s unpaid wages claims. Should Plaintiff’s unpaid wages claims fail, these claims would
20 also fail. Mara Dec. ¶ 20. In addition, Defendant contends that even if Plaintiff were successful in
21 his unpaid wages, claims, he would have to prove Defendant “willfully” failed to pay drivers the
22 appropriate wages due upon separation of employment. “A willful failure to pay wages within the
23 meaning of Labor Code § 203 occurs when an employer intentionally fails to pay wages to an
24 employee when those wages are due. However, a good faith dispute that any wages are due will
25 preclude imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520.
26 “A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense, based
27 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
28 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.”

1 *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not
2 willful. Defendant argues that it would not be liable for waiting time penalties because a “good
3 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
4 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Mara Dec. ¶ 21.

5 **IV. TERMS OF THE PROPOSED SETTLEMENT**

6 **a. Deductions from the Settlement**

7 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
8 action be settled and compromised for the non-reversionary total sum of \$370,000 (“Gross
9 Settlement Amount” or “GSA”), which includes, subject to Court approval: (a) attorneys’ fees of
10 up to \$123,333.33 (one-third of the GSA)⁴; (b) actual litigation expenses estimated not to exceed
11 \$15,000;⁵ (c) a Class Representative Enhancement Payment to the named class representative in a
12 sum not to exceed \$7,500; (d) settlement administration fees and expenses to Apex Class Action
13 LLC (“Apex”), estimated not to exceed approximately \$7,500;⁶ and (e) \$15,000 allocated to
14 Plaintiff’s claims under the PAGA. Of this payment, 65%, or \$9,750 will be provided to the
15 LWDA, and 35%, or \$5,250, will be available for distribution to PAGA Class Members.

16 **b. Calculation of Settlement Payments to Class Members**

17 After all Court-approved deductions from the GSA, it is estimated that \$201,666.67 (“Net
18 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement
19 payment, will be distributed to Participating Class Members. Participating Class Members will
20 receive a pro-rated share of the NSA, less applicable withholdings, based on the number of
21 workweeks they worked in California for Defendant during the Class Period. *See* **Ex. 1** at § III
22 (56)(A)(i). In addition, PAGA Class Members will receive a pro-rated share of the Net PAGA
23 Settlement Amount, less applicable withholdings, based on the number of pay periods they worked
24 in California while employed by Defendant during the PAGA Period. **Ex. 1** at § III (57)(A)(i).

25 ⁴ Although Class Counsel seeks attorneys’ fees under the percentage method, Class Counsel will also provide the
26 Court with their lodestar information at final approval.

27 ⁵ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual
28 costs incurred during the litigation of this case. Should the actual costs be lower than \$15,000, the difference will be
added to the Net Settlement Amount for disbursement to Participating Class Members.

⁶ Apex 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.

1 **c. Notice to the Class**

2 Within 10 business days after entry of the Preliminary Approval Order, Defendant shall
3 send an electronic database with the Class and PAGA Data to the Settlement Administrator. **Ex. 1**
4 at § III(60)(C)(i); *see also* **Ex. 1** at § I (7) and (30). Within 10 business days after receipt of the
5 database, the Settlement Administrator will mail the Class Notice to Class Members in English
6 and with a Spanish translation. **Ex. 1** at § III (60)(C)(iii). After notices are mailed, Class Members
7 have 45 days to respond. **Ex. 1** at § I (40). Class Members may respond to the settlement by
8 requesting to be excluded from it or objecting to it. **Ex. 1** at § III (61)(D) and (E). Class Members
9 can also submit a dispute as to the number of workweeks attributed to them. **Ex. 1** at § III (61)(F).

10 **d. Distribution of Funds**

11 Defendant shall wire or otherwise provide to the Settlement Administrator the GSA no
12 later than September 31, 2026. However, If the Effective Settlement Date is after September 31,
13 2026, then Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
14 Settlement Amount no later than five (5) business days after the Effective Final Settlement Date.
15 **Ex. 1** at § III (60)(K)(i); *see also* **Ex. 1** at § I (18) and (21). Within ten (10) business days after
16 Defendant funds the entire GSA, the Settlement Administrator shall disburse the settlement funds.
17 **Ex. 1** at § III (60)(K)(ii). Participating Class Members and PAGA Class Members must cash or
18 deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar
19 days after the checks are mailed to them. All funds associated with checks returned as
20 undeliverable and funds associated with those checks remaining un-cashed shall be tendered to the
21 State of California's Controller's Office under the Unclaimed Property Statutes in the name of the
22 Class Member. **Ex. 1** at § III (61)(M)(ii).

23 **e. Release of Claims**

24 In exchange for a portion of the Net Settlement Amount, Participating Class Members will,
25 upon the Effective Final Settlement Date, release the Released Parties from all class claims alleged,
26 or that reasonably could have been alleged based on the facts in the Action for the failure to pay
27 all straight time and minimum wages, the knowing and intentional failure to comply with itemized
28 employee wage statement provisions, the failure to pay all wages due at the time of termination,

1 the failure to reimburse business expenses, and violations of unfair competition law. **Ex. 1** at § I
2 (37). In addition, Plaintiff, acting in the capacity of a representative of the State of California, and
3 on behalf of the group of PAGA Class Members, shall agree to release any and all claims for civil
4 penalties that could have been asserted by the Labor Commissioner against Defendant under the
5 PAGA during the PAGA Period, Cal. Lab. Code § 2698, *et seq.* to the extent such claims are
6 predicated on claims alleged or that could have been alleged based on the facts in the Action and
7 Plaintiff's notice to the LWDA for the failure to pay all straight time and minimum wages, the
8 knowing and intentional failure to comply with itemized employee wage statement provisions, the
9 failure to pay all wages due at the time of termination, the failure to reimburse business expenses,
10 and the failure to pay all wages owed twice per month. **Ex. 1** at § I (38). Plaintiff has also agreed
11 to a general release of his claims. **Ex. 1** at § III (63).

12 **V. ARGUMENT**

13 **a. Class Action Settlements Are Subject to Court Review and Approval Under 14 the California Rules of Court**

15 Rule 3.769 requires court approval for class action settlements.⁷ "Before final approval, the
16 court must conduct an inquiry into the fairness of the proposed settlement." California Rules of
17 Court, Rule 3.769(g). Rule 3.769 further requires a noticed motion for preliminary approval of
18 class settlements. Courts act within their discretion in approving settlements that are fair, not
19 collusive, and take into account "all the normal perils of litigation as well as the additional
20 uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir.
21 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.

22 **b. The Settlement is Fair, Reasonable, and Adequate**

23 In deciding whether to approve a proposed class action settlement under Code of Civil
24 Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable."
25 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
26 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-

27 ⁷ The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying
28 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.

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 Plaintiff believes in the merits of his case, he 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 Defendant’s 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 Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and hour employment law and class actions. *Mara Dec.* ¶¶ 3-9. Plaintiff’s 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

1 settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses.
2 Defendant's Counsel practices labor and employment law and have represented numerous
3 employers in similar types of claims. Accordingly, both Parties' Counsel are experienced in wage
4 and hour employment law and class actions.

5 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

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

12 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to
13 "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
14 that of the attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
15 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
16 provided there is a record which allows "an understanding of the amount that is in controversy and
17 the realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently,
18 "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
19 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of
20 reasonableness." *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*
21 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties'
22 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

23 **1. The Settlement is Fair and Reasonable Based on the Strengths** 24 **of Plaintiff's Case and the Risks and Costs of Further Litigation**

25 The proposed settlement was only possible following significant discovery and an
26 evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant
27 produced for the putative class as referenced above. This permitted Class Counsel to engage in a
28 comprehensive analysis of liability and potential damages. The discovery conducted allowed
Plaintiff to evaluate the strengths and weaknesses of his theories of liability. As explained herein,

1 Defendant maintains that the discovery produced demonstrates that it would succeed at both in
2 denying class certification and on the merits.

3 Although, Plaintiff believes this case is suitable for certification on the claimed bases that
4 there are company-wide policies and practices that Plaintiff contends violate California law and
5 uniformly affect the Class Members, Defendant's counterarguments raise uncertainties with
6 respect to both class certification and success on the merits. As the California Supreme Court ruled
7 in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the
8 trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions,
9 with respect to certification of wage and hour claims. While remaining confident in the strengths
10 of his claims, all of these factors led Plaintiff to discount the following potential damage exposure.

11 **2. Potential Exposure on Plaintiff's Claims**

12 The settlement encompasses approximately 4,657 workweeks. *See Ex. 1* at § III (51)(A).
13 This equates to approximately 23,285 shifts. Employees earned around \$32.50 an hour on average.

14 Plaintiff alleges that Defendant fails to pay drivers for the time they are forced to wait for
15 their assigned trucks when there are delays. Drivers are only able to clock-in through a device
16 inside their assigned truck, so when there is a delay they have no choice but to wait. During this
17 time, Plaintiff contends that they are subject to Defendant's control during these waiting periods
18 as they are not able to effectively use the time for their own purposes and have to be ready to be
19 at the terminal whenever dispatch calls them. Through the discovery conducted prior to mediation,
20 Plaintiff estimated that drivers averaged 1.5 hours of wait time a day. Thus, the potential exposure
21 for unpaid wages would be \$1,135,143 (23,285 shifts x \$32.50 average hourly rate x 1.5 hours =
22 \$1,135,143). *Mara Dec.* ¶ 22.

23 Defendant contends these amounts are zero because it lawfully pays drivers for all hours
24 worked. Defendant argues employees are not subject to Defendant's control before the truck
25 arrives at the terminal. Defendant contends that drivers are not expected to perform any work
26 duties prior to the truck arriving and that they are free use this supposed waiting time however they
27 choose. Accordingly, Defendant claims Plaintiff should take nothing on these claims and, if the
28 factfinder agreed, Plaintiff would take nothing. Although remaining confident in his position,

1 Plaintiff had no way of knowing how the factfinder would rule on this issue, and a substantial
2 discount had to be given to make settlement possible. Mara Dec. ¶ 23.

3 Plaintiff also alleges that Defendant fails to reimburse drivers for personal cell phone
4 usage, even though they are expected to remain in constant contact with Defendant about when
5 they arrive at any location, when they finish deliveries, and about any other status update. If
6 Plaintiff were to prevail on his reimbursement cause of action, Class Members would be entitled
7 to reimbursement for a reasonable percentage of their costs associated with their personal cell
8 phones. Therefore, the *maximum potential exposure* under this theory of liability would be
9 \$105,840 (approximately 19.6 months during the relevant time period x \$100, or 50% of an \$200
10 monthly phone bill, x 54 current employees = \$105,840). Mara Dec. ¶ 24. However, Defendant
11 contends these amounts are zero because it never required employees to use their personal cell
12 phone for business purposes. Further, if drivers decided to use their personal cell phones for
13 business purposes, it was solely that driver's choice and not the result of any purported mandate
14 by Defendant. Thus, Defendant asserts Plaintiff and Class Members would not be entitled to any
15 recovery. Mara Dec. ¶ 25.

16 Plaintiff alleges that Defendant failed to provide accurate itemized wage statements which
17 is derivative of Plaintiff's unpaid wages claim. The statute of limitations for Plaintiff's wage
18 statement claim is one year. If Plaintiff were to prevail on this claim, the *maximum potential*
19 *exposure* would be \$216,00. (\$4000 maximum penalty x 54 current drivers = \$216,000). Mara
20 Dec. ¶ 26. However, if Plaintiff's underlying unpaid wages claim failed, this claim would also fail.
21 Moreover, Defendant also asserts that any violation of California Labor Code § 226 was not
22 "knowing and intentional" and that drivers cannot show that they have suffered an injury as a result
23 of any potential violation. Thus, Plaintiff had to take Defendant's arguments into consideration in
24 evaluating this claim. Mara Dec. ¶ 27.

25 Similarly, if Plaintiff prevailed on his unpaid wages claims he and the Class Members may
26 be entitled to waiting time penalties for failure to pay all wages due at termination. Plaintiff
27 calculates the potential maximum exposure for his waiting time penalties cause of action as
28 \$748,800 (64 former drivers x 30 days x 12 hours x \$32.50 average hourly rate = \$748,800). Mara

Dec. ¶ 28. But again, if Plaintiff's underlying unpaid wages claim failed, so would this claim. There is also a possibility that the factfinder could find these violations are not willful. If this were to occur, Plaintiff 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. Defendant argues that Plaintiff will not be able to show that any violations were willful. Defendant also contends that there is a good faith dispute about whether any wages are due. Mara Dec. ¶ 29.

Plaintiff also seeks PAGA penalties for the failure to pay all time worked, failure to reimburse business expenses, and failure to provide accurate wage statements. 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 Plaintiff's core claims is thus \$1,354,500 (\$100 x 3 PAGA violations x 4,515 pay periods = \$1,354,500). Mara Dec. ¶ 30. Defendant contends that Plaintiff 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, Defendant's exposure would be \$451,500. Mara Dec. ¶ 31.

Further, as Plaintiff's PAGA claims are based on the same alleged unlawful conduct as his class claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's 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 Plaintiff and the PAGA Class Members – assuming liability is proven as to each of Plaintiff's 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 Plaintiff and the PAGA Members. Mara Dec. ¶ 32.

Thus, not taking into account any of Defendant's defenses or arguments, Plaintiff estimated that if he were successful in his core claims, Defendant's total exposure would be approximately \$1,240,983 [\$1,135,143 (unpaid time) + \$105,840 (reimbursements) = \$1,240,983]. If the factfinder were to side with Defendant on the unpaid wages claim, Plaintiff and the Class Members would also not be entitled to any damages for derivative wage statement, waiting time, or PAGA penalties. If Plaintiff is successful in his unpaid wages claim, and is able to prove that Defendant's

1 wage statement and waiting time penalties violations were “knowing and intentional” and
2 “willful,” he may also be entitled to damages for wage statement penalties and waiting time
3 penalties in the amounts of \$216,00 and \$748,800, respectively. Plaintiff and the PAGA Class
4 Members may also be entitled to PAGA penalties in the amount of \$1,354,500, subject to Court
5 reduction. Mara Dec. ¶ 33.

6 **3. The Settlement Amount of \$370,000 is Reasonable**

7 In light of the risks Plaintiff’s claims faced, Plaintiff and his Counsel believe that the
8 settlement amount of \$370,000 – with an average settlement share amount estimated at \$1709.04⁸
9 – is a reasonable and fair settlement amount. Mara Dec. ¶¶ 22-34.

10 It should be noted that a settlement is not judged solely against what might have been
11 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
12 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91
13 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139.
14 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by
15 the proposed settlement is substantially narrower than it would be if the suits were to be
16 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
17 served by a voluntary settlement in which each side gives ground in the interest of avoiding
18 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688
19 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the
20 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*
21 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 (noting that
22 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
23 attorneys’ fees was higher than median percentage for recoveries in shareholder class action
24 settlements, averaging 2.2%-3% from 2002 through 2006).

25 **c. Provisional Certification Should be Granted**

26 A class action is appropriate when the class is ascertainable and there is “a well defined
27 community of interest in the questions of law and fact involved affecting the parties to be
28

⁸ \$201,666.67 Net Settlement Amount / 121 estimated class members = \$1,666.67

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. Plaintiff contends, and Defendant does 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

Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also respectfully requests the Court set a final approval hearing date for June 8, 2026.

MARA LAW FIRM, PC

Date: October 15, 2025

Signed: /s/ Carter Cordura

David Mara, Esq.

Carter Cordura, Esq.

Attorneys for Plaintiff