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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

LUIS CORTEZ, ANTONIO RODRIGUEZ, and WILLIAM MILLER as individuals and on behalf of all others similarly situated, Plaintiff, v. EXTREME TRANSPORTATION, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 37-2024-00012130-CU-OE-CTL [*Assigned for All Purposes to the Honorable Evan P. Kirvin; Dept. C-69*] **PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE** Date: November 13, 2026 Time: 9:00 a.m. Complaint Filed: March 12, 2024 Trial Date: None Set

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I. INTRODUCTION

Plaintiffs Luis Cortez, Antonio Rodriguez, and William Miller (collectively "Plaintiffs"), on behalf of themselves and the approximately 250-member putative class, respectfully request that this Court preliminarily approve the Settlement Agreement ("Agreement"[1]) entered into between Plaintiffs and Defendant EXTREME TRANSPORTATION, INC. ("Defendant" or "Extreme") (collectively Plaintiffs and Defendant are the "Parties"). The Parties' Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-reversionary $2,850,000 Gross Settlement Amount ("GSA"). The proposed Settlement Class (also referred to herein as the "Class") is comprised of all current and former non-exempt employees who worked for Defendant as a California non-exempt employee in the position of Auto Transport Specialist at any time from March 12, 2020, through May 16, 2026. (Exhibit 1 ¶ 1).

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 $2,850,000 is within the range of reasonableness. **This settlement is estimated to pay Settlement Class Members an average payment of approximately $6,498.**[2] The proposed Agreement satisfies all the criteria for preliminary approval. Accordingly, Plaintiffs seek: (1) preliminary approval of the terms contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiffs as Class Representatives; (4) appointment of Lidman Law APC; Haines Law Group, APC; Marquee Law Group; and Mara Law Firm, PC, as Class Counsel; (5) approval of the Parties' Notice of Class and Representative Action Settlement[3] (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

On March 12, 2024, Plaintiff Luis Cortez filed a class action complaint against Defendant (the "*Cortez* Action") (Declaration of Scott Lidman, Esq. ("Lidman Dec.") ¶ 10). On September 30, 2024, Plaintiff Antonio Rodriguez filed a class action against Defendant. (Mara Dec. ¶ 11). On

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[1] The Parties' Agreement is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as Exhibit 1. "Exhibit 1" herein refers to the Parties' Agreement.
[2] The Net Settlement Amount is approximately $1,624,500. $1,624,500 divided by 250 Class Members equals $6,498.
[3] The Class Notice is attached to the Agreement as Exhibit A.

December 4, 2024, Plaintiff Rodriguez filed a separate PAGA action. (Mara Dec. ¶ 12). On November 13, 2024, Plaintiff William Miller filed a class action against Defendant. (Declaration of Tuvia Korobkin, Esq. ("Korobkin Dec.") ¶ 11). On January 21, 2025, Plaintiff Miller filed an FAC adding a PAGA cause of action. (Korobkin Dec. ¶ 11).

On May 11, 2026, Plaintiff Luis Cortez filed a Second Amended Complaint that added Plaintiffs Antonio Rodriguez and William Miller into the *Cortez* Action as well as their additional claims. (Mara Dec. ¶ 12).

III. INVESTIGATION AND LITIGATION HISTORY

a. Discovery and Investigation

The Parties conducted significant investigation and discovery of the facts and law. Through informal discovery, Defendant produced relevant policy documents that covered employees' employment with Defendant, such as employee handbooks, incentive plans, and job descriptions. Defendant also produced a sampling of time and wage records for Class Members. Plaintiffs also requested, and Defendant produced, data relevant to establishing a potential exposure model in preparation for mediation. From this discovery, Plaintiffs and their Counsel were able to analyze Defendant's liability and prepare a realistic damage model. (Mara Dec. ¶ 15).

b. The Parties Agreed to Attend Mediation

The Parties attended two full days of mediation with mediator Dan Turner on November 14, 2025, and February 26, 2026, respectively. At the second mediation, the Parties were able to reach a settlement in principle that resulted in the instant settlement agreement Plaintiffs are seeking preliminary approval of. (Mara Dec. ¶ 16).

c. The Parties' Staunchly Conflicting Positions

i. Unpaid Wages

Plaintiffs assert that Defendant pays employees on a piece rate pay system. Plaintiffs contend that Defendant pays drivers based on the load. Plaintiffs assert that under well-established law, pay based a piece-rate basis fails to compensate the drivers for "non-productive" hours worked. Plaintiffs assert that Labor Code § 226.2 provides that "workers who are paid on a piece-rate basis must be separately compensated for their rest periods and other nonproductive time." Plaintiffs contend that

§ 226.2 was a codification of case law within the trucking industry that found that mileage-based pay did not compensate drivers for non-driving (non-productive) time. S*ee Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252, 1253; *Reinhardt v. Gemini Motor Transport* (E.D.Cal.2012) 869 F.Supp.2d 1158, 1168; *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 110; *Quezada v. Con-Way Freight, Inc.* (N.D. Cal. 2012) 2012 WL 2847609, at *6. As such, Plaintiffs contend that because drivers are paid by the load, Defendant failed to compensate them for tasks unrelated to driving, including without limitation, fueling and washing vehicles, inspections, verifying seals, trailers and dollies, getting/compiling directions, pre-planning trips, waiting during inspections and/or breakdowns, completing paperwork, and conducting a pre- and post-shift inspection on the trucks at the beginning and end of their shifts. (Mara Dec. ¶ 17).

Defendant disputes this and contends that employees are not paid on a piece rate basis. Defendant contends that employees are paid based on a percentage of the revenue which encompasses all work time including, but not limited to, delivery, unloading, productive time, nonproductive time, and paperwork. Defendant relies on the case *Oman v. Delta Airlines, Inc.*, as support for its payment structure. In *Oman*, the Court found that compensation owed to employees is a matter determined primarily by contract. *Oman v. Delta Airlines, Inc.* (2020) 9 Cal.5th 762, 781. *Oman* states, "[c]ompensation may be calculated on a variety of bases: Although nonexempt employee pay is often by the hour, state law expressly authorizes employers to calculate compensation by the task or piece, by the sale, or by any other convenient standard." *Id.* Defendant contends that its job offers to drivers set forth the unit of pay. Defendant asserts that these offers state that drivers will be paid a percentage of the load. Defendant contends that this compensation is paid for all work tasks performed. *Oman* further states, "[c]onsistent with general contract interpretation principles, the unit for which pay is promised should be determined based on the 'mutual intention of the parties as it existed at the time of contracting.'" *Id.* at 782. Defendant contends that if litigation were to continue, it would provide declarations from drivers that attest to the fact that they knew the compensation they were receiving – a percentage of the revenue – was payment for all work tasks performed. Accordingly, Defendant contends that drivers have been paid for all time worked and are not owed any wages. Although remaining confident in their position, Plaintiffs understand that, if the

factfinder sided with Defendant's defenses, Plaintiffs would take nothing on their wage claim, a potential reality that had to be considered in any realistic settlement negotiation. (Mara Dec. ¶ 18).

ii. Wage Statements

Plaintiffs assert that Defendant's wage statements do not comply with California Labor Code § 226. Plaintiffs contend that the wage statements Defendant provides to drivers failed to include total hours worked, the number of piece-rate units earned, and the applicable piece-rate. (Mara Dec. ¶ 19).

Defendant contends that it attaches a sheet to wage statements that provides drivers with all of the information required under § 226. In addition, Defendant argues that employees can ascertain the required information, such as the overtime rate, using simple math. Defendant relies on cases which hold that "[w]age statements comply with § 226(a) when a plaintiff employee can ascertain the required information by performing simple math, using figures on the face of the wage statement." *Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed. Appx. 661, 662 (9th Cir. 2014) (citing *Morgan v. United Retail Inc.*, 186 Cal.App.4th 1136 (2010)). (Mara Dec. ¶ 20).

Further, Defendant also asserts that any violation of California Labor Code § 226 was not "knowing and intentional." *See* Cal. Lab. Code § 226(e) ("An employee suffering injury as a result of a ***knowing and intentional*** failure by an employer" may recover damages") (emphasis added); *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 ("Some statutory penalties are imposed only if an employers' violation was 'willful' or 'knowing.' . . . [*S*]*ection 226, subdivision (e)* penalizes an employer's 'knowing and intentional' failure to provide itemized wage statements under *section 226, subdivision (a)*[.]"); *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056. Defendant maintains that it reasonably, and in good faith believed that it was providing a complete and accurate wage statement in compliance with California law. Defendant further contends that employees cannot show that they have suffered an injury because of any potential violation of California Labor Code § 226. Defendant contends that employees knew to talk to their manager or the Human Resources department if they had any questions or concerns with their wage statements. As such, disputes exist as to whether Defendant's wage statements violated California Labor Code § 226(a)(8), whether any such violation was knowing and intentional, and whether

employees suffered an injury. (Mara Dec. ¶ 21).

iii. Business Reimbursements

Plaintiffs contend that Defendant failed to reimburse drivers for all necessary business expenses. Plaintiffs contend that Defendant required drivers to use their personal cellular phones for work-related purposes but did not reimburse them for the cell phones and/or the data usage. Plaintiffs assert that Defendant required drivers to use their personal cell phones to communicate with supervisors, dispatch, and others. (Mara Dec. ¶ 22).

Defendant disputes this claim and asserts that drivers do not need to use their personal cell phones for business purposes and that it reimburses employes for any business expenses. Defendant asserts that employers must only reimburse an employee for "necessary expenditures." Cal. Lab. Code § 2802(a). Defendant contends that a plaintiff must show: (1) they incurred expenses; (2) the expenses were *necessary* to discharge their duties; and (3) was not reimbursed. *Alvarado v. Wal-Mart Assoc., Inc*. (C.D. Cal. Nov. 3, 2021) 2021 WL 6104234, *5. Defendant asserts that there is not a necessity to use a personal cell phone where the employer provides other means of communication and the employee opts instead to use their personal cell phone out of convenience or preference. Defendant contends that it did not have a policy requiring drivers to use their personal cell phones and that they provide alternative methods of communication to drivers that allow drivers to communicate with dispatch and management. (Mara Dec. ¶ 23).

iv. Waiting Time Penalties

Plaintiffs also contend that Defendant failed to pay employees their final wages within the timeframes outlined by California law. This claim is derivative of Plaintiffs' unpaid wages claim. Should Plaintiffs' unpaid wages fail, this claim would also fail. (Mara Dec. ¶ 24).

Defendant contends that even if Plaintiffs were successful in their unpaid wages claim, they would have to prove Defendant "willfully" failed to pay employees the appropriate wages due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages are due. However, a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages

are due occurs when an employer presents a defense, based in law or fact, which would preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not willful. Defendant argues that it would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of those premium wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 25).

v. Meal and Rest Periods

Plaintiffs also assert that Defendant failed to provide drivers with lawful meal and rest periods. Defendant argues that these claims are preempted by the FMCSA's December 28, 2018, Decision and Order. In that Decision and Order, the FMCSA ordered that California's meal and rest period claims were preempted for commercial motor vehicle drivers. The Ninth Circuit ruled that the agency did not exceed its authority in issuing the decision. *Int'l Bhd. Of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Administration*, 986 F.3d 841, 846 (9th Cir. 2021); *see also California ex rel. Becerra v. Fed. Motor Carrier Safety Admin.* (2026) 177 F.4th 1032. Thus, the only potential value of meal and rest period claims lies in the remote and unknowable prospect that the agency may reverse course at some point. (Mara Dec. ¶ 26).

vi. PAGA

Plaintiffs also seek PAGA penalties for the claims outlined above. PAGA allows the private enforcement of certain California Labor Code sections relating to wage and hour violations. Because Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as her class claims, Plaintiffs' PAGA claims are subject to the same risks on the merits. In addition, Defendant maintains that Plaintiffs' PAGA claims face manageability concerns consistent with the class certification challenges. Specifically, Defendant has due process rights which would not permit Plaintiffs to attempt to generalize violations from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn*. (2014) 59 Cal.4th 1. Further, 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 the Aggrieved Employees – 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 will likely reduce any PAGA penalty amount awarded to the Aggrieved Employees. (Mara Dec. ¶ 27).

IV. TERMS OF THE PROPOSED SETTLEMENT

a. Deductions from the Settlement

The Parties have agreed that this action be settled and compromised for the non-reversionary total sum of $2,850,000, which includes, subject to Court approval: (a) attorneys' fees of up to $997,500 (35% of the GSA)[4]; (b) actual litigation expenses estimated not to exceed $40,000; (c) Class Representative Enhancement Payments to the named class representatives in a sum not to exceed $10,000 each; (d) settlement administration fees and expenses to Phoenix Settlement Administrators ("Phoenix"), estimated not to exceed approximately $8,000; and (e) $150,000 allocated to Plaintiffs' claims under the PAGA. Of this payment, 75%, or $112,500 will be provided to the LWDA, and 25%, or $37,500, will be available for distribution to the PAGA Group.[5]

b. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that $1,624,500 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members. Participating Class Members will receive a pro-rated share of the NSA, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period. (Exhibit 1 ¶ 9(B)). In addition, PAGA Group members will receive a pro-rated share of the NSA, less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendant during the PAGA Period. (Exhibit 1 ¶ 9(C)).

c. Notice to the Class

Within ten (10) Court days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with the Class Data. (Exhibit 1 ¶ 14(A)). Within

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

[5] The PAGA Group are all current and former California non-exempt employees who worked for Defendant in the position of Auto Transport Specialist at any time from March 12, 2023 through May 16, 2026. (Exhibit 1 ¶ 2).

ten (10) Court days after receipt of the Class Data, the Settlement Administrator will mail the Class Notice to Class Members. (Exhibit 1 at ¶ 14(B)). After notices are mailed, Class Members have sixty (60) days to respond. Class Members may respond to the settlement by requesting to be excluded from it or objecting to it. (Exhibit 1 ¶¶ 14(C), 14(D)). Class Members can also file a dispute as to the number of workweeks attributed to them. (Exhibit 1 ¶ 14(E)).

d. Distribution of Funds

Defendant shall fully fund the GSA within thirty (30) calendar days after the Effective Date. (Exhibit 1 ¶ 7(C)). Within five (5) business days after the Settlement Administrator's receipt of the GSA, the Settlement Administrator shall disburse the settlement funds. (Exhibit 1 ¶ 9(D)). Each Settlement Class member who is mailed a Settlement Award must cash his/her Settlement Award check within 180 days from the date the Settlement Administrator mails it. Any funds payable to a Settlement Class member whose check is not cashed within 180 days after mailing will be deposited by the Settlement Administrator with the California Unclaimed Property Fund, in the name of the Settlement Class member whose check is not cashed. (Exhibit 1 ¶ 9(F)).

e. Release of Claims

In exchange for a portion of the Net Settlement Amount, Participating Class Members will release the Released Parties from any and all causes of action, claims, rights, damages, wages, premium wages, restitution, liquidated damages, interest, penalties, attorneys' fees, costs, expenses, declaratory relief, injunctive relief, and liabilities of any kind under California law that were alleged in the operative Complaints in the Actions and the anticipated Second Amended Complaint in the *Cortez* Action (collectively, the "Operative Pleadings"), or that reasonably could have been asserted based on the facts alleged in the Operative Pleadings, arising out of or relating to Participating Class Members' employment with Defendant in California during the Class Release Period. (Exhibit 1 ¶ 4). In addition, in exchange for a portion of the PAGA Payment, all PAGA Group Members will release any and all claims for civil penalties or other relief pursuant to the PAGA that were asserted in, or reasonably could have been asserted based on the facts and theories stated in, the PAGA notices submitted by Plaintiffs to the Labor and Workforce Development Agency (the "PAGA Notice Letters"). (Exhibit 1 ¶ 5). In addition, Plaintiffs have agreed to a general release of their claims.

(Exhibit 1 ¶ 6).

V. ARGUMENT

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

Rule 3.769 requires court approval for class action settlements.[6] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (California Rule of Court 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements. Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.

b. The Settlement is Fair, Reasonable, and Adequate

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

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

The settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm's length

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

settlement negotiations until the settlement was reached. While Plaintiffs believes in the merits of their case, they also recognize the inherent risks of litigation and understand 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 Plaintiffs' Counsel and Defendant's Counsel are particularly experienced in wage and hour employment law and class actions. (Mara Dec. ¶¶ 3-9; Lidman Dec. ¶¶ 2-8; Haines Dec., ¶¶ 2-8; Moore Dec., ¶¶ 2-5; Gose-Hardy Dec., ¶¶ 2-4; Korobkin Dec. ¶¶ 2-10). Plaintiffs' Counsel has prosecuted numerous wage and hour class action cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Defendant's Counsel practices labor and employment law and have represented numerous employers in similar types of claims. Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class actions.

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in determining whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168

Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id.*

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

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

The proposed settlement was only possible following significant discovery and an evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant produced for the putative class as referenced above. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted allowed Plaintiff to evaluate the strengths and weaknesses of her theories of liability. As explained herein, Defendant maintains that the discovery produced demonstrates that it would succeed at both in denying class certification and on the merits.

Although, Plaintiffs believe this case is suitable for certification on the claimed bases that there are company-wide policies that Plaintiffs contend violate California law and uniformly affect the Class Members, Defendant's counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage

and hour claims. While remaining confident in the strengths of their claims, all of these factors led Plaintiffs to discount the following potential damage exposure.

2. Potential Exposure on Plaintiffs' Claims

a. Unpaid Wages

Plaintiffs contend that drivers are not paid for all hours worked as required by California law. Namely, Plaintiffs assert that drivers are paid on a piece-rate basis that does not pay drivers for all work performed, such as nonproductive tasks. If Plaintiffs were to prevail on this claim, Plaintiff and the Class Members would be entitled to potential damages of approximately $2,700,000.[7] Defendant contends that it properly paid employees for all work tasks and, thus, drivers are not owed any additional wages. Defendant contends that its percentage of the load pay structure is lawful under *Oman v. Delta Airlines, Inc.* Plaintiffs had to take into consideration the all or nothing prospect of this claim. If the Court were to find that Defendant's pay structure is lawful, the damages owed under this claim would be reduced to zero. Not knowing how the factfinder would come out on the issue, Plaintiffs had to discount this claim for mediation and settlement purposes. (Mara Dec. ¶ 28).

b. Wage Statements

Plaintiffs contend that Defendant's wage statements do not comply with California Labor Code § 226 because they do not itemize the total hours worked, the number of piece-rate units earned, and the applicable piece-rate. If Plaintiff and the Class Members were to prevail on this claim, they would be owed approximately $824,000.[8] Defendant contends that it complied with § 226 because it supplied an additional sheet with wage statements that lists all of the required information. In addition, Defendant contends that Plaintiffs cannot show that any potential violation was knowing and intentional or that Plaintiffs and the Class Members suffered an injury. Because of this, Defendant asserts that the damages for this claim would be zero. Plaintiffs had to take into consideration Defendant's arguments and the fact that if the Court agreed with them, Plaintiffs and the Class Members would not be owed any damages under this claim. For that reason, Plaintiffs had to discount this claim for mediation and settlement purposes. (Mara Dec. ¶ 29).

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[7] 18,000 workweeks x 10 hours of nonproductive time x $15.00 per hour minimum wage = $2,700,000
[8] 206 drivers x $4,000 maximum penalty = $824,000

c. Business Reimbursements

Plaintiffs contend that Defendant requires drivers to use their personal cell phones to communicate with supervisors and dispatch but do not reimburse drivers for this expense. If Plaintiffs and the Class Members were to prevail on this claim, they would be entitled to damages in the amount of approximately $123,540.[9] Defendant contends that employees are not required or permitted to use their personal cell phones for business purposes as it provides employees with communication devices which they can use to communicate with dispatch. Defendant contends that Plaintiffs cannot point to any policy or practice under which employees are necessarily required to use their personal cell phones. As such, Defendant asserts that there are no damages for this claim. Plaintiffs had to consider Defendant's arguments in evaluating the settlement value of this claim. (Mara Dec. ¶ 30).

d. Waiting Time Penalties

If Plaintiffs were to prevail on their unpaid wages claims, Plaintiffs and the Class Members may also be entitled to waiting time penalties. Plaintiffs calculate the potential exposure under this claim as $2,361,600.[10] If Plaintiffs' unpaid wages claim fails, this claim also fails. There is also a possibility that the factfinder could find that these violations are not willful. If this were to occur, Plaintiffs and the Class would receive nothing under this claim. In addition, a good faith dispute that any wages are due will preclude imposition of waiting time penalties. Defendant argues that Plaintiffs 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. ¶ 31).

e. PAGA

Plaintiffs also seek PAGA penalties. 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 Plaintiffs' PAGA claim are $1,753,400.[11] Defendant contends that Plaintiffs would not be allowed to "stack" PAGA penalties. If the Court were to agree with this and only award one PAGA penalty per pay period, Defendant's

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[9] $30 per month x 4,118 months = $123,540

[10] $60.00 average hourly rate x 8 hours a day x 30 days x 164 drivers = $2,361,600

[11] (5,776 pay periods x 3 violations per pay period (unpaid wages, wage statements, and business reimbursements) x $100 = $1,732,800) + (206 pay periods x 1 violation (waiting time penalties) x $100 = $20,600) = $1,753,400

exposure would be $577,600.[12] As Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs' class claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs and the Aggrieved Employees – assuming liability is proven as to each of Plaintiffs' claims – is higher in this case where these same individuals may also be receiving money for the same unlawful conduct under the class claims. As such, the Court may reduce any PAGA penalty amount awarded to Plaintiff and the Aggrieved Employees. (Mara Dec. ¶ 32).

f. Total Exposure

Thus, not taking into account any of its defenses or arguments, Plaintiffs estimated that if they were successful in their claims, Defendant's total exposure would be approximately $7,219,202 [$2,700,000 (unpaid wages) + $824,000 (wage statements) + $123,540 (business reimbursements) + $2,361,600 (waiting time penalties) + 1,753,400 (PAGA) = $7,762,540]. (Mara Dec. ¶ 33).

3. The Settlement Amount of $2,850,000 is Reasonable

In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the settlement amount of $2,850,000 – **with an average settlement share amount estimated at $6,498** – is a reasonable and fair settlement amount. (Mara Dec. ¶ 34). It should be noted that a settlement is not judged solely against what might have been recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139. "Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*, *supra*, at 250.

c. Provisional Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well defined

[12] 5,776 pay periods x $100 = $577,600

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

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

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

VI. CONCLUSION

Plaintiffs respectfully submit 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. Plaintiffs also respectfully requests the Court set a final approval hearing date.

Date: October 19, 2026

MARA LAW FIRM, PC

Signed: _____

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