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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF ALAMEDA**

14 ALEJANDRO OLIVERA, GUILLERMO  
15 MENDEZ, IVAN LANDEROS, OMAR  
16 DOMINGUEZ, AND ERIK CONTRERAS  
17 on behalf of themselves and all others  
18 similarly situated;

19 Plaintiffs,

20 v.

21 C & B DELIVERY SERVICE, a California  
22 Corporation doing business as TEMCO  
23 WAREHOUSES & DISTRIBUTION; HOME  
24 EXPRESS DELIVERY SERVICE, LLC, a  
25 California Limited Liability Company doing  
26 business as TEMCO LOGISTICS, and DOES  
27 1 through 10, inclusive,

28 Defendants.

Case No. RG20062287

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR ATTORNEYS'  
FEES, COSTS, AND CLASS  
REPRESENTATIVE SERVICE  
PAYMENTS**

**Reservation No.: R-2286314**

Date: September 14, 2021

Time: 3:00 p.m.

Dept.: 23

Judge: Hon. Brad Seligman

Complaint Filed: May 26, 2020

Trial Date: N/A

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12 *Attorneys for Plaintiffs and the Putative Class*

1 PLEASE TAKE NOTICE that on September 14, 2021, at 3:00 p.m. in Department 23 of  
2 the above-entitled Court, the Honorable Brad Seligman presiding, located at 1221 Oak Street,  
3 Oakland, California 94612, Plaintiffs Alejandro Olivera, Erik Contreras, Omar Dominguez,  
4 Ivan Landeros, and Guillermo Mendez (“Plaintiffs”) will and hereby do move for an Order  
5 granting the following relief in the above-captioned matter:

6 (1) Approving the application for payment to Class Counsel of \$356,166.67 in  
7 reasonable attorneys’ fees;

8 (2) Approving the application for payment to Class Counsel of \$33,032.54 in Litigation  
9 costs; and

10 (3) Approving the payment of Class Representative Service Payments in the amount of  
11 \$7,500.00 to each Plaintiff, which will total \$37,500.00.

12 This motion is based on this Notice of Motion; the Memorandum of Points and  
13 Authorities, the supporting declarations of Class Counsel Hunter Pyle and Carolyn M. Bell; the  
14 supporting declarations of Plaintiffs Alejandro Olivera, Erik Contreras, Omar Dominguez, Ivan  
15 Landeros, Guillermo Mendez and Translators Darlene Sanchez, and Jacquelyn Enciso all filed  
16 concurrently; such evidence or oral argument as may be presented at the hearing; and on the  
17 complete record and file herein.

18  
19 Respectfully submitted,

20 Dated: August 17, 2021

HUNTER PYLE LAW

21  
22 By:  \_\_\_\_\_

Hunter Pyle  
Katherine Fiester

23  
24 *Attorneys for Plaintiffs, the Putative Class, and  
Aggrieved Employees*

25 //  
26 //  
27 //

1 Dated: August 17, 2021

AEGIS LAW FIRM, PC

2  
3 By: Carolyn Bell

4 Samuel Wong  
5 Jessica Campbell  
6 Carolyn Bell

7 *Attorneys for Plaintiffs, the Putative Class, and*  
8 *Aggrieved Employees*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs Alejandro Olivera, Erik Contreras, Omar Dominguez, Ivan Landeros, and  
3 Guillermo Mendez (“Plaintiffs”) submit the following memorandum of points and authorities  
4 in support of their Motion for Attorneys’ Fees, Costs, and Class Representative Service  
5 Payments in the above-captioned matter.

6 **I. INTRODUCTION**

7 This case is a class action brought on behalf of 341 drivers or helpers who have worked  
8 for defendants C & B Delivery Service, a California corporation doing business as Temco  
9 Warehouses & Distribution; and Home Express Delivery Service, LLC, a California Limited  
10 Liability Company doing business as Temco Logistics (“Defendants”) in California. Plaintiffs  
11 and Defendants are collectively referred to herein as the “Parties.”

12 In the operative Second Amended Complaint, Plaintiffs allege various wage and hour  
13 violations and included a cause of action under the Private Attorneys General Act (“PAGA”).  
14 (See Declaration of Hunter Pyle in Support of Plaintiffs’ Motion for Final Approval of Class  
15 Action Settlement (“Pyle FA Decl.”), ¶¶ 20-22.) Defendants deny each of these allegations.  
16 (Settlement, ¶ 33.)

17 On May 5, 2021, this Court preliminarily approved the non-reversionary, non-claims  
18 made settlement (“Settlement”) reached by the Parties.<sup>1</sup> The Settlement provides for a Gross  
19 Settlement Amount of \$1,068,500.00. (Settlement, ¶ 22.) It includes all payments to  
20 Participating Class Members, the PAGA Settlement for PAGA Employees, Settlement  
21 Administrative Costs, Class Representative Service Payments, and Class Counsels’ attorneys’  
22 fees and Litigation costs. (*Ibid.*) PAGA penalties have been settled in the amount of  
23 \$50,000.00. (*Id.* at ¶ 18.)

24  
25  
26 <sup>1</sup> For ease of reference the Joint Stipulation for Class Action Settlement and Release of Claims  
27 (“Settlement”) is attached as Exhibit 1 and the Preliminary Approval Order is attached to the  
28 Declaration of Hunter Pyle in Support of Plaintiff’s Motion for Final Approval of Class  
Settlement as Exhibit 2, filed concurrently. All capitalized terms herein have the same  
meanings as those in the Settlement.



1 The Settlement is an excellent result and provides for substantial relief to the Settlement  
2 Class Members. (Pyle FA Decl., ¶ 50.) As described in Plaintiffs’ Motion for Final Approval of  
3 Class Settlement (“MFA”), the Settlement represents more the one hundred percent (100%) of  
4 Plaintiffs’ reasonable settlement value of the claims. (*Ibid*; see also Memorandum of Points and  
5 Authorities in Support of Motion for Preliminary Approval, April 13, 2021 (“MPA”) at  
6 IV(A)(3). The average payment will be approximately \$1,712.17. (See Declaration of Kevin  
7 Lee Regarding Class Notice Administration filed in support of Plaintiffs’ motion for final  
8 approval (“Lee FA Decl.”) at ¶ 13.) Participating Class Members will not have to face the  
9 uncertainty and delay of protracted litigation. (Pyle FA Decl., ¶ 32.)

10 The Class Notice was mailed to Class Members on June 9, 2021. (Lee FA Decl., ¶¶ 4-5,  
11 Exhibit A, Class Notice.) The Class Notice informed Settlement Class Members of each of the  
12 requests made in this motion, including the requests for attorney fees, costs, and Class  
13 Representative Service Payments. (*Ibid*.) Class Members were given 60 days to review the  
14 Class Notice and to either opt out of the Settlement or to object to any portion of the  
15 Settlement, including any of the requests made herein. (Settlement, ¶¶ 48-49, 51.)

16 The 60-day deadline expired on August 9, 2021. (Lee FA Decl., ¶¶ 8-9.) No  
17 Settlement Class Members opted out, and none objected to the Settlement. (*Id.* at ¶¶ 8-10.)  
18 Thus, Settlement Class Members have responded positively to the Settlement, including the  
19 requests for attorney fees, Litigation costs, and Service Payments.

20 With this motion, and pursuant to the terms of the Settlement,<sup>2</sup> Plaintiffs request  
21 \$356,166.67 in Class Counsels’ attorney fees and \$33,032.54 in Litigation costs. (See  
22 Declaration of Hunter Pyle in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and  
23 Class Representative Service Payments (“Pyle Decl. ISO Fees”), ¶ 19; see also Declaration of  
24 Carolyn Bell in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class  
25 Representative Service Payments (“Bell Decl. ISO Fees”), ¶¶ 18-21.) Plaintiffs respectfully

26 <sup>2</sup> The Joint Stipulation for Class and PAGA Representative Action Settlement and Release of  
27 Claims (“Settlement”) is attached to the Declaration of Hunter Pyle in Support of Plaintiff’s  
28 Motion for Final Approval of Class Settlement (“Pyle FA Decl.”) as Exhibit 1, filed  
concurrently. All the capitalized terms herein have the same meanings as those in the  
Settlement.

1 request that the Court grant these requests, as Class Counsel have conferred quantifiable  
2 monetary benefits to the Settlement Class while undertaking risky, expensive, and time-  
3 consuming litigation on a contingent basis. (Pyle Decl. ISO Fees, ¶ 18; Bell Decl. ISO Fees, ¶  
4 20.) Class Counsel advanced all litigation costs and expended significant resources, including  
5 hundreds of attorney hours and thousands of dollars in Litigation costs, to litigate this case and  
6 bring it to successful resolution. (Pyle Decl. ISO Fees, ¶ 24; Bell Decl. ISO Fees, ¶ 21.)

7 Plaintiffs also seek Class Representative Service Payments in the amount \$7,500 for  
8 each of the named Plaintiffs. (Pyle Decl. ISO Fees, ¶¶ 29-37.) These Class Representative  
9 Service Payments are warranted in recognition of the substantial time and effort that Plaintiffs  
10 have invested in this case, as well as the risks they undertook in agreeing to be the named  
11 plaintiffs in wage and hour class action litigation against their former employer. (Pyle Decl.  
12 ISO Fees, ¶¶ 29-37.) Plaintiffs have filed detailed declarations in support of this request. (See  
13 generally Declaration of Alejandro Olivera in Support of Plaintiffs’ Motion for Attorneys’  
14 Fees, Costs, and Class Representative Service Payments (“Olivera Decl.”); Declaration of Erik  
15 Contreras in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative  
16 Service Payments (“Contreras Decl.”); Declaration of Omar Dominguez in Support of  
17 Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service Payments  
18 (“Dominguez Decl.”); Declaration of Ivan Landeros in Support of Plaintiffs’ Motion for  
19 Attorneys’ Fees, Costs, and Class Representative Service Payments (“Landeros Decl.”);  
20 Declaration of Guillermo Mendez in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs,  
21 and Class Representative Service Payments (“Mendez Decl.”).<sup>3</sup>

22 For these reasons, as set forth more fully below, Plaintiffs respectfully request that the  
23 Court approve an award of attorneys’ fees in the amount of \$356,166.67, Litigation costs in the  
24

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25 <sup>3</sup> Plaintiffs’ preferred language is Spanish; accordingly, Plaintiffs’ declarations were translated  
26 to them in Spanish prior to signature. (See Declaration of Jacquelyn Enciso Re: Translation Of  
27 Guillermo Mendez, Ivan Landeros, Omar Dominguez, and Erik Contreras’ Declarations in  
28 Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service  
Payments; see also Declaration of Darlene Sanchez Re: Translation of Declaration Of  
Alejandro Olivera in Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class  
Representative Service Payments.)

1 amount of \$33,032.54, and Class Representative Service Payments to each Plaintiff in the  
2 amount of \$7,500, totaling \$37,500. (Pyle Decl. ISO Fees, ¶ 19; Bell Decl. ISO Fees, ¶¶ 18-21.)

## 3 **II. OVERVIEW OF THE PROCEEDINGS AND SETTLEMENT**

4 Defendants are in the logistics business. Defendants contract with retail stores such as  
5 Costco, Home Depot, and JCPenney to provide delivery, installation, and disposal services for  
6 customers who purchase their products. Plaintiffs and Settlement Class Members are drivers  
7 and/or helpers who perform the arduous work of delivering and installing home appliances for  
8 Defendants. (Pyle FA Decl., ¶ 19.)

9 Plaintiff Alejandro Olivera filed the *Olivera* Action on May 26, 2020, in Alameda  
10 County Superior Court alleging violations of the Labor Code for: 1) failure to pay minimum  
11 wages; 2) failure to pay overtime wages; 3) failure to provide meal periods; 4) failure to permit  
12 rest breaks; 5) failure to furnish adequate wage statements; 6) failure to pay all wages due upon  
13 separation of employment; and 7) unfair business practices. Plaintiff Olivera filed a First  
14 Amended Complaint on August 25, 2020, adding a claim for PAGA violations. (Pyle FA Decl.,  
15 ¶ 20.)

16 On August 19, 2020, plaintiffs Guillermo Mendez, Erik Contreras, Omar Dominguez,  
17 and Ivan Landeros filed the *Mendez* Action in Los Angeles County Superior Court, Case No.  
18 20STCV31975. The Mendez Action alleges that Defendants: 1) failed to pay minimum wages;  
19 (2) failed to pay overtime wages; (3) failed to provide meal periods; (4) failed to permit rest  
20 breaks; (5) failed to pay all wages to piece-rate workers for rest breaks; (6) failed to reimburse  
21 business expenses; (7) failed to provide accurate itemized wage statements; (8) failed to pay all  
22 wages due upon separation of employment; and (9) violation of Business and Professions Code  
23 §§ 17200, *et seq.* (Pyle FA Decl., ¶ 21.) On August 26, 2020, plaintiffs in the *Mendez* Action  
24 filed a First Amended Complaint to name an additional Defendant. (*Ibid.*)

25 Rather than proceed in competing lawsuits, Plaintiff Olivera and the Plaintiffs in the  
26 *Mendez* Action elected to work together. To that end, the Plaintiffs in the *Mendez* Action and  
27 the claims brought on behalf of drivers and helpers in that case have been added to the Second  
28

1 Amended Complaint in *Olivera*.<sup>4</sup> The Second Amended Complaint, filed on May 12, 2021, is  
2 the operative complaint in this action. (Pyle FA Decl., ¶ 22.)

3 The Parties conducted significant informal discovery, including exchanging a large  
4 volume of information regarding the claims asserted in the Litigation. (Pyle FA Decl., ¶ 25.)  
5 For example, Defendants produced, and Plaintiffs’ counsel reviewed and analyzed, relevant  
6 wage and hour policies including meal period and rest break policies, multiple employee  
7 handbooks, and a ten percent (10%) sample of the Settlement Class Members’ payroll and time  
8 records. (*Ibid.*) Plaintiffs’ counsel have also reviewed other documents and data related to  
9 Settlement Class Members’ employment with Defendants, including piece rate records, wage  
10 statements, and dates of employment. (*Ibid.*)

11 Plaintiffs’ counsel determined under what circumstances a potential violation of law  
12 could be identified. (Pyle FA Decl., ¶ 26.) Plaintiffs’ counsel then retained a damages expert to  
13 calculate the violation rates and potential exposure of the claims alleged in the Litigation. (*Ibid.*)

14 Defendants have also indicated that they are in dire financial circumstances due to the  
15 recent loss of a major account in addition to settling three previous class and/or PAGA actions.  
16 (Pyle FA Decl., ¶ 27.) Defendants contend that the loss of this major account is financially  
17 devastating to their company and will have a significant impact on their ability to pay any  
18 settlement or judgment. (*Ibid.*)

19 In response, Plaintiffs requested, and Defendants produced, a variety of documents  
20 relevant to their financial position. (Pyle FA Decl., ¶ 28.) Plaintiffs then retained an expert to  
21 review Defendants’ financial documents. (*Ibid.*) The expert advised Plaintiffs’ counsel as to  
22 Defendants’ financial condition and outlook. Plaintiffs’ counsel then incorporated their expert’s  
23 opinion into their assessment of the case. (*Ibid.*)

24 On November 4, 2020, the Parties attended an all-day mediation with mediator Michael  
25 Loeb. (Pyle FA Decl., ¶ 29.) Based on the informal discovery, Plaintiffs provided the mediator  
26

27 \_\_\_\_\_  
28 <sup>4</sup> *Mendez* has been stayed pending the approval hearing in this matter. Once final approval has  
been granted, the Plaintiffs in the *Mendez* Action will file a request to dismiss the action.

1 with a detailed analysis of Defendants’ liability and damages. (*Ibid.*) Defendants provided a  
2 detailed brief setting forth their arguments regarding each of Plaintiffs’ claims. (*Ibid.*)

3 The Parties did not resolve the matter at mediation, but continued to engage in arms-  
4 length negotiations with the assistance of the mediator. (Pyle FA Decl., ¶ 30.) Ultimately, the  
5 Parties reached a settlement in principal based on a mediator’s proposal. The principal terms of  
6 the Parties’ agreement were outlined in a Memorandum of Understanding. (*Ibid.*) The Parties  
7 thereafter negotiated the terms of the Settlement Agreement. (*Ibid.*)

8 On May 5, 2021, the Court preliminarily approved the Settlement, approved the proposed  
9 notice procedure, and set deadlines by which Settlement Class Members could opt out or object  
10 to the Settlement. At that time, the Court also set a final settlement approval hearing for  
11 September 14, 2021. (Pyle FA Decl., ¶ 3, 33, Preliminary Approval Order.)

12 In the Order Granting Motion for Preliminary Approval of Class Settlement, the Court  
13 found, on a preliminary basis, that the Settlement fell within the range of reasonableness. (Pyle  
14 FA Decl., ¶ 3, Preliminary Approval Order.) The Court also appointed Plaintiffs Alejandro  
15 Olivera, Erik Contreras, Omar Dominguez, Ivan Landeros, and Guillermo Mendez as the Class  
16 Representatives; Hunter Pyle and Katherine Fiester of Hunter Pyle Law and Samuel A. Wong,  
17 Jessica L. Campbell, and Carolyn M. Bell of Aegis Law Firm, P.C. as Class Counsel; and  
18 Phoenix Settlement Administrators, Inc. (“Phoenix”) as the Settlement Administrator. (*Ibid.*)

19 On May 19, 2021, Defendants provided Phoenix with a Class List of 341 unique  
20 Settlement Class Members. (Lee FA Decl., ¶ 3.)

21 On June 9, 2021, after updating the mailing addresses through the NCOA, Phoenix  
22 mailed Class Notices via First Class Mail to the 341 Settlement Class Members contained in  
23 the Class List.<sup>5</sup> (Lee FA Decl., ¶¶ 4-5, Exhibit A, Class Notice.)

24 The deadline for filing objections or opting out of the Settlement was August 9, 2021.  
25 (Lee FA Decl., ¶¶ 8-9.) As of August 16, 2021, Phoenix has received zero (0) requests for  
26 exclusion from the Settlement and has also received zero (0) objections to the Settlement.

27 \_\_\_\_\_  
28 <sup>5</sup> After conducting skip tracking on any returned notices, only 6, or .02% of the Class Notices  
were undeliverable because Phoenix was unable to locate a current address.

1 (*Ibid.*) Moreover, Phoenix did not receive any workweek disputes through the response period.  
2 (*Id.* at ¶ 10.)

3 **III. SUMMARY OF SETTLEMENT AND PROPOSED ALLOCATION**

4 1. The Gross Settlement Amount is \$1,068,500.00. (Settlement, ¶ 22.) That sum  
5 includes all payments to Participating Class Members, the PAGA Settlement for PAGA  
6 Employees, Settlement Administrative Costs, Class Representative Service Payments, and  
7 Class Counsels’ attorneys’ fees and Litigation costs. (*Ibid.*) PAGA penalties have been settled  
8 in the amount of \$50,000.00. (*Id.* at ¶ 18.)

9 2. Plaintiffs seek reasonable attorneys’ fees equaling one-third (or 33.33%) of the  
10 Gross Settlement Amount, which equals approximately \$356,166.67. (Pyle Decl. ISO Fees, ¶¶  
11 19, 20-23.) Defendants do not oppose this request. (Settlement, ¶ 58.)

12 3. Plaintiffs also seek Litigation costs in the amount of \$33,032.54. (Pyle Decl.  
13 ISO Fees, ¶¶ 19, 24-26.) Defendants do not oppose this request. (Settlement, ¶ 58.)

14 4. Plaintiffs Alejandro Olivera, Erik Contreras, Omar Dominguez, Ivan Landeros,  
15 and Guillermo Mendez each seek Class Representative Service Payments for their services in  
16 the amount of \$7,500, totaling \$37,500. (Pyle Decl. ISO Fees, ¶¶ 19, 29-37.) Defendants do not  
17 oppose this request. (Settlement, ¶ 62.)

18 5. Plaintiffs seek payment of the Settlement Administrator’s costs in the amount of  
19 \$7,950. (Pyle Decl. ISO Fees, ¶ 19; Lee FA Decl., ¶ 14, Exhibit B.)

20 6. If the Court grants these requests, the Net Settlement Amount will be  
21 **\$583,850.79:**

<b>Gross Settlement Fund:</b>	<b>\$1,068,500.00</b>
Less PAGA Settlement	-\$ 50,000.00
Less Settlement Administration	-\$ 7,950.00
Less Enhancement Awards	-\$ 37,500.00
Less Attorneys’ Fees	-\$ 356,166.67
Less Litigation Costs	-\$ 33,032.54
<b>NET SETTLEMENT FUND</b>	<b>\$ 583,850.79</b>

27 (Pyle FA Decl., ¶ 37.)  
28

1 7. Additionally, the PAGA Settlement will be distributed as follows:

2	<b>PAGA Settlement:</b>	<b>\$ 50,000.00</b>
3	<u>Less Payment to LWDA</u>	<u>-\$ 37,500.00</u>
4	<b>PAYMENT TO PAGA EMPLOYEES</b>	<b>\$ 12,500.00</b>

5 (Pyle FA Decl., ¶ 38.)

#### 6 IV. LEGAL ANALYSIS

##### 7 A. Standard of Review

8 Plaintiffs and the Settlement Class, as the prevailing parties in settlement, are entitled to  
9 recover their attorneys' fees and costs for their wage claims. (See Lab. Code §§ 218.5, 226(e),  
10 1194, 2699(g), 2802; Code Civ. Proc. § 1021.5(a).) A fee award is justified where the legal  
11 action has produced its benefits by way of a voluntary settlement. (See, e.g., *Maria P. v. Riles*  
12 (1987) 43 Cal.3d 1281, 1290-1291; *Westside Community for Independent Living, Inc. v.*  
13 *Obledo* (1983) 33 Cal.3d 348, 352-353.)

14 When a settlement results in a common fund for the benefit of a class, class counsel  
15 may be awarded fees as a percentage of the common fund. (See, e.g., *Wershba v. Apple*  
16 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing the “percentage of recovery”  
17 method].)

18 The California Supreme Court confirmed that “[t]he percentage of the common fund  
19 method is appropriate in class action cases. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th  
20 480, 506.) Specifically, in *Laffitte*, the California Supreme Court held:

21 The recognized advantages of the percentage method—including relative  
22 ease of calculation, alignment of incentives between counsel and the class,  
23 a better approximation of market conditions in a contingency case, and the  
24 encouragement it provides counsel to seek an early settlement and avoid  
unnecessarily prolonging the litigation [citation]—convince us the  
percentage method is a valuable tool that should not be denied our trial  
courts.

25 (*Id.* at p. 503; see also *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“*Serrano III*”) [“when a  
26 number of persons are entitled in common to a specific fund, and an action brought by a  
27 plaintiff or plaintiffs for the benefit of all results in the creation of preservation of that fund,  
28 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh*

1 (1982) 32 Cal.3d 621, 627 [In awarding a fee from the common-fund obtained for the benefit of  
2 all parties, the trial court acts within its equitable power to prevent the other parties’ unjust  
3 enrichment.]] .

4 *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with  
5 tools such as the lodestar cross-check, although they need not do so. (*Laffitte*, 1 Cal.5th at p.  
6 506 [“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a  
7 percentage fee...they also retain the discretion to forgo a lodestar cross-check and use other  
8 means to evaluate the reasonableness of a requested percentage fee.”].)

9 Under the lodestar method, the court first multiplies the number of hours reasonably  
10 expended by each attorney or legal staff member by their hourly rate to calculate the lodestar.  
11 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Serrano III, supra*, 20 Cal.3d at p. 48.) The  
12 court may enhance this lodestar figure by a multiplier to account for a range of factors, such as  
13 the novelty and difficulty of the case, its contingent nature and the degree of success achieved.  
14 (See *Ketchum, supra*, 24 Cal.4th at pp. 1132-1136; *Serrano III, supra*, 20 Cal.3d at p. 49.)

#### 15 **B. Plaintiffs’ Requested Attorneys’ Fees are Fair and Reasonable**

16 The common fund approach continues to be a preferred method of awarding fees. Since  
17 *Serrano III*, there has been a “ground swell of support for mandating the percentage-of-the-  
18 fund approach in common fund cases.” (*Lealao v. Beneficial California, Inc.* (2000) 82  
19 Cal.App.4th 19, 27.) Common fund awards are normally based upon the total amount of the  
20 fund created. (*Williams v. MGM-Pathe Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.)

21 In this case, there is a defined and clearly traceable monetary benefit to the Class:  
22 \$1,068,500. The Settlement is non-reversionary, and under no circumstances will any portion  
23 of the Settlement revert to Defendants. Therefore, the Court can base an award of attorneys’  
24 fees on the Settlement Class Members’ benefit using a common fund approach. Under this  
25 approach, Class Counsel should be paid their attorneys’ fees based on the common benefit they  
26 have achieved for the class. (*Lealao, supra*, 82 Cal.App.4th at pp. 28-36, 50-51 [noting that  
27 percentage of the fund awards are appropriate in cases where the common benefit to the class  
28 can be quantified]; *Serrano III, supra*, 20 Cal.3d at pp. 35-40.)



1 “Empirical studies show that, regardless whether the percentage method or the lodestar  
2 method is used, fee awards in class actions average around one-third of the recovery.” (*Chavez*  
3 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11, quoting *Shaw v. Toshiba America*  
4 *Information Systems, Inc.* (E.D.Tex. 2000) 91 F.Supp.2d 942, 972; see also *In re Activision Sec.*  
5 *Litigation* (1989) 723 F.Supp. 1373, 1375 [“whatever method is used and no matter what  
6 billing records are submitted... the result is an award that almost always hovers around 30% of  
7 the fund created by the settlement.”].)

8 Class Counsel have recently had requests for attorneys’ fees equaling one-third of the  
9 common fund approved in Alameda County Superior Court. (See *Winston, et al. v. Comcast*  
10 *Spectacor Holding Company, LLC et al.* (Alameda Super. Ct., No. RG16815734, July 14,  
11 2020) [approving award of attorneys’ fees of one-third of the common fund]; *James v. Packers*  
12 *Sanitation Services, LTD. Inc.* (Alameda Super. Ct., No. RG16822242, June 25, 2019) [same];  
13 *Kostyuk v. Golden State Overnight Delivery Service, Inc.* (Alameda County Superior Court  
14 case no. RG14727191) [same]; *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda County  
15 Superior Court Case no. RG16815734 [same].)

16 Furthermore, California courts customarily approve payments of attorney’s fees  
17 amounting to one-third of the common fund in similar cases. (*Big Lots Overtime Cases* (San  
18 Bernardino Super. Ct., JCC No. 4283, Feb. 4, 2004) [approving award of attorneys’ fees of  
19 one-third of the common fund]; *Davis v. The Money Store, Inc.* (Sacramento Super. Ct., No.  
20 99AS01716, Dec. 26, 2000) [same]; *Ellmore v. Ditech Funding Corp.* (C.D.Cal., No. SAVC  
21 01-0093, Sept. 12, 2002) [same]; *Miskell v. Automobile Club of Southern California* (Orange  
22 County Super. Ct., No. 01CC09035, May 27, 2003) [same]; *Cassaro v. Spaghetti Factory*  
23 (Orange County Superior Court, Case No. 01CC02500, January 5, 2004) [same].)

24 Federal courts are also in accord. (See *Schiller v. David’s Bridal, Inc.*, No. 1:10-CV-  
25 00616-AWI, 2012 WL 2117001, at \*19 (E.D. Cal. June 11, 2012) [listing numerous class cases  
26 with fee awards amounting to one-third of the recovery].)

27 Here, Plaintiffs seek one-third (33.33%) of the Gross Settlement Amount. The Court  
28 should grant this request because the results in this case are excellent. As discussed in great

1 detail in Plaintiffs’ Motion for Preliminary Approval, Plaintiffs calculated the reasonable  
2 settlement value of the case to be approximately \$1,039,386.93. (See MPA at pp. 12-22.) The  
3 proposed Gross Settlement Amount of \$1,068,500 thus represents over one hundred percent  
4 (100%) of Plaintiffs’ reasonably forecasted recovery, including penalties. (Pyle FA Decl., ¶  
5 50.) The Class Members will receive on average \$1,712.17. (Lee FA Decl., ¶ 13.) Settlement  
6 Class Members will not have to wait years for litigation and risk Defendants’ insolvency.

7 Additionally, no Settlement Class Members have opted out of the Settlement, resulting  
8 in a participation rate of 100%; and critically, no Settlement Class Members have objected to  
9 the Settlement. (Lee FA Decl., ¶¶ 8-10.) These facts confirm that the Settlement is an excellent  
10 result. Consequently, Plaintiffs respectfully submit that the requested fee is fair compensation  
11 for obtaining an excellent result for the Class and, in doing so, undertaking complex, risky,  
12 potentially expensive and time-consuming litigation on a contingent basis.

13 **C. The Lodestar Method Confirms the Attorneys’ Fees are Appropriate**

14 Plaintiffs respectfully request that the Court apply the percentage-of-the-fund approach  
15 which is reasonable in this case. However, Class Counsel further justify the requested  
16 attorneys’ fees based on a lodestar method that sufficiently rewards Class Counsel for their  
17 work performed, results achieved, and risks incurred.

18 Under the lodestar method, a court first computes the lodestar amount by multiplying  
19 the number of hours reasonably expended by each attorney or legal staff member by his or her  
20 reasonable hourly rate. (See *Serrano III, supra*, 20 Cal.3d at p. 48.) Class Counsel’s task-  
21 based billing records are described in the Declarations of Hunter Pyle and Carolyn M. Bell in  
22 Support of Plaintiffs’ Motion for Attorneys’ Fees, Costs, and Class Representative Service  
23 Payments.

24 These records indicate that from the inception of this case to the date of this filing,  
25 Class Counsel at Hunter Pyle Law have worked the following attorney hours in this case:

26

Name	Hours Worked	Rate	Amount
Hunter Pyle	159.1	\$850.00	\$135,235.00
Katherine Fiester	224.8	\$500.00	\$112,400.00

27

28

Darlene Sanchez (Paralegal)	5.3	\$225.00	\$1,192.50
<b>Totals</b>	<b>270.8</b>		<b>\$ 248,827.50</b>

Additionally, Class Counsel at Aegis have worked the following attorney hours in this case:

<b>Name</b>	<b>Hours Worked</b>	<b>Rate</b>	<b>Amount</b>
Samuel A. Wong	52.8	\$785.00	\$41,448.00
Jessica L. Campbell	56.2	\$650.00	\$36,530.00
Carolyn Bell	128.9	\$425.00	\$54,782.50
<b>Totals</b>	<b>237.9</b>		<b>\$ 132,760.50</b>

Class Counsels' total lodestar is therefore \$381,588.00.<sup>6</sup> (See Pyle Decl. ISO Fees, ¶ 23; Bell Decl. ISO Fees, ¶¶ 18-19.) Hunter Pyle included time for Class Counsels' preparation for and appearance at the final approval hearing and remaining settlement administration tasks, including responding to questions from Settlement Class Members, and subsequent reporting on the administration of the Settlement. Mr. Pyle estimates that these additional tasks will require approximately 15 hours of attorney time. (See Pyle Decl. ISO Fees, ¶ 20.) Should the Court wish to review Class Counsel's billing records, Class Counsel can provide them to the Court for an *in camera* review.

### **1. Class Counsel's Hourly Rates are Reasonable**

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The Court may consider other factors when determining a reasonable hourly rate, including the attorney's skill and experience, the nature of the work performed, the relevant

<sup>6</sup> Attorneys' fee awards often include lodestar enhancements known as "multipliers" based on the complexity of the issues in the case, the contingent nature of the litigation, and the amount at stake and results obtained by Class Counsel. (*Ketchum, supra*, 24 Cal. 4th at pp. 1132-33 [fee awards should be "adjusted in some manner to reflect the fact that the fair market value of legal services provided on [the fair market value] basis is greater than the equivalent noncontingent hourly rate."]; *see also Serrano III, supra*, 20 Cal. 3d at p. 49 (1977); *Lealao, supra*, 82 Cal.App.4th at pp. 45-46.) However, Class Counsels' lodestar without a multiplier is in excess of the attorneys' fees requested in this matter.

1 area of expertise and the attorney's customary billing rates. (*Flannery v. California Highway*  
2 *Patrol* (1998) 61 Cal.App.4th 629, 632.)

3 While there is a scarcity of hourly-fee paying plaintiffs in class action litigation, a  
4 California court provided some guidance in 1993 when it approved an hourly rate of \$450 for  
5 wage and hour class litigation in the absence of an agreement by the client to pay fees on an  
6 hourly basis. (See *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976,  
7 overruled on other grounds in *Lakin v. Watkins Assoc. Indus.* (1993) 6 Cal.4th 644, 664.)  
8 Similarly, in 2007, the Northern District of California found \$650 per hour to be a reasonable  
9 hourly rate for an attorney who was admitted to the bar in June 1992, and had achieved success  
10 in multi-plaintiff employment law cases. (*Aguilar v. Zep Inc.* (N.D. Cal., Aug. 15, 2014, No.  
11 13-CV-00563-WHO) 2014 WL 4063144.)

12 Here, Class Counsel respectfully request that the following hourly rates be applied  
13 against the hours worked: \$850 for attorney Hunter Pyle, \$500 for attorney Katherine Fiester,  
14 \$785 for attorney Samuel Wong, \$650 for attorney Jessica Campbell, \$425 for attorney  
15 Carolyn Bell. (Pyle Decl. ISO Fees, ¶ 20; Bell Decl. ISO Fees, ¶¶ 11-17.)

16 Class Counsel has had similar hourly rates approved by courts in similar cases. Courts  
17 have routinely approved the hourly rates charged by Class Counsel Hunter Pyle Law. See, e.g.,  
18 *Kostyuk v. Golden State Overnight Delivery Service, Inc.* (Alameda County Superior Court  
19 case no. RG14727191); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda County  
20 Superior Court Case no. RG16815734); *Hooper v. URS Midwest, Inc.*, (San Bernardino  
21 Superior Court Case No. CIV DS1607489); *Brooks, et al. v. Chariot Transit, Inc.* (San  
22 Francisco Superior Court Case no. CGC-16-554398); *Austin, et al. v. Foodliner, Inc.*, 4:16-cv-  
23 07185-HSG (N.D. Cal.); *Castro, et al. v. ABM Industries, Inc.*, et al., 4:17-cv-03026-YGR  
24 (N.D. Cal.); *Winston, et al. v. Comcast Spectacor Holding Company, LLC et al.* (Alameda  
25 Super. Ct., No. RG16815734, July 14, 2020) [approving Hunter Pyle's 2020 rate of \$795 and  
26 Katherine Fiester's 2020 rate of \$425.]; see also Pyle Decl. ISO Fees, ¶ 20.)

1 Likewise, courts have routinely approved hourly rates charged by Class Counsel Aegis.  
2 (*See, e.g., Perez v. Hal Hays*, C.D. Cal, Case No. EDCV 16-01461 AG (SPx) [explicitly  
3 approving hourly rates]; Bell Decl. ISO Fees, ¶ 17.)

4 Class Counsel undertook substantial work to obtain the class-wide Settlement. This  
5 included, among other things: conducting significant pre-suit investigation; analyzing  
6 Plaintiffs' claims; drafting and amendment of pleadings; conducting ongoing legal research on  
7 numerous complex issues; fact-intensive interviews with Plaintiffs; preparing an informal  
8 discovery plan; extensive review of documents and close work and review with two experts in  
9 order to evaluate Plaintiffs' claims and assess potential damages and Defendants' defenses;  
10 active participation in ongoing settlement negotiations; substantial negotiation over a  
11 memorandum of understanding, a 35-page long form settlement agreement, Class notice, and  
12 Class notice plan; drafting motions for preliminary and final approval, and overseeing the  
13 settlement administration process. (See Pyle ISO Fees Decl., ¶ 22; Bell Decl. ISO Fees, ¶ 20.)

14 Class Counsels' skill and experience also justify the requested rate. Class Counsel have  
15 substantial experience in employment law actions, especially wage and hour class actions.  
16 Class Counsels' practices are primarily devoted to litigating employment law violations, and  
17 many of Class Counsels' cases are wage and hour class actions. Class Counsel have  
18 represented employees in numerous class action lawsuits involving wage and hour violations  
19 and have obtained favorable settlements for employees. Class Counsels' experience in  
20 litigating employment wage and hour matters was integral in evaluating the strengths and  
21 weaknesses of the case against Defendants and negotiating a fair and reasonable settlement.  
22 (Pyle Decl. ISO Fees, ¶¶ 2-16; Bell Decl. ISO Fees, ¶¶ 6-16.)

#### 23 **D. Litigation Costs**

24 Class Counsels' Litigation costs to date total approximately \$33,032.54. (Pyle Decl.  
25 ISO Fees, ¶ 24, Exhibit 1; Bell Decl. ISO Fees, ¶ 21, Exhibit A.) These costs were necessarily  
26 expended in litigating this case. (Pyle Decl. ISO Fees, ¶ 24, Exhibit 1; Bell Decl. ISO Fees, ¶  
27 21, Exhibit A.) The damages expert was critical to extracting Defendants' data and calculating  
28 damages for the various, complex wage and hour violations that included a complicated piece-

1 rate pay scheme that: (1) failed to pay Settlement Class Members for the non-productive hours  
2 they worked; (2) deducted time from Settlement Class Members' pay for meal periods they did  
3 not receive; (3) failed to compensate Settlement Class Members at their proper regular rate of  
4 pay for overtime and double time purposes by failing to incorporate "commissions" and  
5 "bonus" pay into the regular rate of pay; and (4) failed to separately pay Settlement Class  
6 Members for rest and recovery time at their proper regular rate of pay. (See Pyle Decl. ISO  
7 Fees, ¶¶ 24-25.)

8 Moreover, plaintiffs requested, and Defendants produced, a variety of documents  
9 relevant to their financial position after Defendants indicated that they are in  
10 dire financial circumstances that will have a significant impact on their ability to pay any  
11 settlement or judgement due to the recent loss of a major account in addition to settling three  
12 previous class and/or PAGA actions. (Pyle Decl. ISO Fees, ¶ 26.) The expert that Plaintiffs  
13 retained to review these Defendants' financial documents was critical to Plaintiffs' ability to  
14 assess the case. (*Ibid.*)

#### 15 **E. The Requested Service Payments are Reasonable**

16 The proposed Class Representative Service Payments in the amount of \$7,500 for each  
17 named Plaintiff are intended to recognize Plaintiffs' substantial initiative, risk, and effort on  
18 behalf of the Class. (Pyle Decl. ISO Fees, ¶¶ 29-37; see generally Olivera Decl.; Contreras  
19 Decl.; Dominquez Decl.; Landeros Decl.; Mendez Decl.)

20 Courts routinely approve incentive awards to compensate named plaintiffs for the  
21 services they provide and the risks they incur during class action litigation. (See *In re*  
22 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380 [approving incentive payments  
23 of \$10,000 each to four class representatives]; *Bell v. Farmers Ins. Exchange* (2004) 115  
24 Cal.App.4th 715, 726 [upholding "service payments" to named plaintiffs]; see also *Van*  
25 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 [approving \$50,000  
26 participation award].

27 The "[c]riteria courts may consider in determining whether to make an incentive award  
28 include: 1) the risk to the class representative in commencing suit, both financial and otherwise;

1 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount  
2 of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the  
3 personal benefit (or lack thereof) enjoyed by the class representative as a result of the  
4 litigation.” (*Van Vranken, supra*, 901 F.Supp. at p. 299.)

5 Courts have also recognized that assuming potentially career-damaging risks for the  
6 vindication of the rights of fellow employees is a factor justifying a substantial enhancement  
7 award. (See, e.g., *Roberts v. Texaco, Inc.* (S.D.N.Y. 1997) 979 F.Supp. 185, 201 [“present or  
8 past employee whose present position or employment credentials or recommendation may be at  
9 risk by reason of having prosecuted the suit, who therefore lends his or her name and efforts to  
10 the prosecution of litigation at some personal peril, a substantial enhancement award is  
11 justified.”].)

12 **1. The Court Should Award Each Plaintiff a Class Representative Service**  
13 **Payment in the Amount of \$7,500.**

14 The Supreme Court acknowledged that an employer’s current employees are unlikely to  
15 seek legal redress, stating, “fear of economic retaliation might often operate to induce  
16 aggrieved employees ... to accept substandard conditions.” (*Mitchell v. Robert DeMario*  
17 *Jewelry, Inc.* (1960) 361 U.S. 288, 292; see also *Kasten v. Saint-Gobain Performance Plastics*  
18 *Corp.* (2011) 563 U.S. 1; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App. 4th 715, 746  
19 [former chief counsel of DLSE indicating that without private enforcement through class  
20 actions, the department’s resources would be overtaxed].)

21 An award of \$7,500 to each named Plaintiff in recognition of the risk they incurred in  
22 bringing the Litigation, the indispensable role in the litigation and the time and effort they have  
23 invested in the case. (Pyle Decl. ISO Fees, ¶¶ 29-37.) Plaintiffs are low-wage workers. (*Ibid.*)  
24 They initiated the Litigation in order to enforce California wage and hour laws. (*Ibid.*) They  
25 played an integral part in the Litigation and achieved an excellent result for their fellow  
26 workers. (*Ibid.*)

27 The Service Payments are requested in recognition of the risks incurred, Plaintiffs’  
28 release of all potential individual claims against Defendants, and the time, efforts, and

1 assistance that Plaintiffs have spent on behalf of the Class. (See Settlement, ¶ 42; see generally  
2 Olivera Decl.; Contreras Decl.; Dominquez Decl.; Landeros Decl.; Mendez Decl.)

3 Plaintiffs met with Class Counsel at the inception of the case to provide detailed  
4 information regarding Defendants' payment policies. (See Olivera Decl., ¶ 3; Contreras Decl., ¶  
5 4; Dominquez Decl., ¶ 4; Landeros Decl., ¶ 4; Mendez Decl., ¶ 4.) Plaintiffs provided  
6 invaluable assistance to Class Counsel with respect to understanding Defendants' industry and  
7 practices. (Pyle Decl. ISO Fees, ¶¶ 29-37). Plaintiffs also searched for and provided various  
8 documents, including payroll, time, and manifest records to Class Counsel for review. (See  
9 Olivera Decl., ¶ 4; Contreras Decl., ¶ 5; Dominquez Decl., ¶ 5; Landeros Decl., ¶ 5; Mendez  
10 Decl., ¶ 5.) Plaintiffs had at over 30 phone calls with Class Counsel over the course of the past  
11 year and a half to be advised of the progress of the case. (Pyle Decl. ISO Fees, ¶¶ 30, 33; see  
12 also Olivera Decl., ¶ 7; Contreras Decl., ¶¶ 4-6; Dominquez Decl., ¶¶ 4-6; Landeros Decl., ¶¶  
13 4-6; Mendez Decl., ¶¶ 4-6.) Plaintiff also made themselves available throughout the case to  
14 answer questions about their employment with Defendants and to communicate with Class  
15 Counsel about case strategy. (See Olivera Decl., ¶ 11; Contreras Decl., ¶ 7; Dominquez Decl., ¶  
16 7; Landeros Decl., ¶ 7; Mendez Decl., ¶ 7.) Most of these calls lasted approximately 30  
17 minutes. (See Pyle Decl. ISO Fees, ¶ 30; see also Olivera Decl., ¶ 11.) Plaintiffs were actively  
18 involved with the settlement negotiations for the case and carefully reviewed the Settlement  
19 Agreement before signing it. (See Olivera Decl., ¶¶ 8-9; Contreras Decl., ¶ 6; Dominquez  
20 Decl., ¶ 6; Landeros Decl., ¶ 6; Mendez Decl., ¶ 6.)

21 Plaintiffs have also undertaken risks with respect to their future employment prospects  
22 because Plaintiffs have sued their employer. (See Pyle Decl. ISO Fees, ¶ 35; see also Olivera  
23 Decl., ¶ 13; Contreras Decl., ¶¶ 8-11; Dominquez Decl., ¶¶ 8-11; Landeros Decl., ¶¶ 8-11;  
24 Mendez Decl., ¶¶ 8-11.) Any potential future employer who runs a background check on  
25 Plaintiffs will discover this fact. In the transportation industry job market, this factor has may  
26 weigh heavily against them. (See Pyle Decl. ISO Fees, ¶¶ 34-35.)

27 Furthermore, Plaintiffs' initiative and involvement in this litigation have furthered  
28 California's public policies, including providing employees with proper overtime



1 compensation. (See *Alvarado v. Dart Container Copr. Of California* (2018) 4 Cal.5th 542,  
2 552, 562 [recognizing that “California has a longstanding policy of discouraging employers  
3 from imposing overtime work” and that “in deciding how to factor a flat sum bonus into an  
4 employee’s overtime pay rate, we are obligated to prefer an interpretation that discourages  
5 employers from imposing overtime work and that favors the protection of the employee’s  
6 interests.”].)

7 Accordingly, a \$7,500 Class Representative Service Payment to each Plaintiff fairly  
8 compensates them for the substantial assistance they provided to Class Counsel, the services  
9 they have rendered to the Settlement Class Members, the risks they have incurred, and their  
10 services in furthering the public policy underlying California’s wage statutes and unfair  
11 competition laws. (See Pyle Decl. ISO Fees, ¶¶ 29-37; see also Olivera Decl., ¶¶ 2-15;  
12 Contreras Decl., ¶¶ 12-13; Dominquez Decl., ¶¶ 12-13; Landeros Decl., ¶¶ 12-13; Mendez  
13 Decl., ¶¶ 12-13.)

14 **V. CONCLUSION**

15 For all the foregoing reasons, Plaintiffs request that the Court approve the request for an  
16 award of attorneys’ fees in the amount of \$356,166.67, and Litigation costs of \$33,032.54.  
17 Plaintiffs also request that the Court approve the requested Service Payments to each Plaintiff  
18 in the amount of \$7,500, totaling \$37,500.

19  
20 Respectfully submitted,

21 Dated: August 17, 2021

HUNTER PYLE LAW

22  
23 By:  \_\_\_\_\_  
24 Hunter Pyle  
Katherine Fiester

25 *Attorneys for Plaintiffs, the Putative Class, and*  
26 *Aggrieved Employees*

27 //  
28 //

1 Dated: August 17, 2021

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2  
3 By: Carolyn Bell

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