

1 **HUNTER PYLE, SBN 191125**  
2 **KATHERINE FIESTER, SBN 301316**  
3 HUNTER PYLE LAW  
4 428 Thirteenth Street, 11th Floor  
5 Oakland, California 94612  
6 Telephone: (510) 444-4400  
7 Facsimile: (510) 444-4410  
8 Email: hunter@hunterpylelaw.com  
9 kfiester@hunterpylelaw.com

10 *Attorneys for Erik Contreras, Omar Dominguez,*  
11 *Ivan Landeros, Guillermo Mendez, Alejandro Olivera*  
12 *and the Putative Class*

13 *Additional Counsel Listed on the Following Page*

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF ALAMEDA**

16 ALEJANDRO OLIVERA, on behalf of  
17 himself and all others similarly situated;

18 Plaintiffs,

19 v.

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

27 Defendants.

Case No.: RG20062287

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

**Reservation No.: R-2236806**

Date: May 4, 2021  
Time: 3:00 p.m.  
Dept: 23  
Judge: Hon. Brad Seligman

Complaint Filed: May 26, 2020  
Trial Date: N/A

1 **SAMUEL WONG, SBN 217104**  
2 **JESSICA CAMPBELL, SBN 280626**  
3 **CAROLYN BELL, SBN 313435**  
4 AEGIS LAW FIRM, PC  
5 9811 Irvine Center Drive, Suite 100  
6 Irvine, CA 92618  
7 Telephone: (949) 379-6250  
8 Facsimile: (949) 379-6251  
9 Emails: swong@aegislawfirm.com  
10 jcampbell@aegislawfirm.com  
11 cbell@aegislawfirm.com

12 *Attorneys for Erik Contreras, Omar Dominguez,*  
13 *Ivan Landeros, Guillermo Mendez, Alejandro Olivera*  
14 *and the Putative Class*

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on  
2 May 4, 2021 at 3:00 p.m. or as soon thereafter as the matter may be heard in Department 23 of the  
3 above-entitled Court, located at 1221 Oak Street, Oakland, California 94612, Plaintiffs Alejandro  
4 Olivera, Erik Contreras, Omar Dominguez, Ivan Landeros, and Guillermo Mendez, the named  
5 Plaintiffs in the proposed Second Amended Complaint, will and hereby do move this Court for:

- 6 1) Preliminary approval of the proposed Joint Stipulation for Class and PAGA Representative  
7 Action Settlement and Release of Claims (the “Settlement”);
- 8 2) Provisional certification, pursuant to section 382 of the California Code of Civil Procedure,  
9 for settlement purposes only, of the proposed Settlement Class defined as follows: Current  
10 and former drivers and helpers who were employed by Defendants working out of  
11 Defendants’ Pomona warehouse from May 25, 2020 through December 4, 2020, or any of  
12 Defendants’ other warehouses throughout California at any time between May 26, 2016  
13 through December 4, 2020;
- 14 3) Preliminary appointment of Erik Contreras, Omar Dominguez, Ivan Landeros, Guillermo  
15 Mendez, and Alejandro Olivera as Class Representatives;
- 16 4) Preliminary appointment of Hunter Pyle and Katherine Fiester of Hunter Pyle Law and  
17 Jessica Campbell, Samuel Wong, and Carolyn Bell of AEGIS Law Firm PC as Class  
18 Counsel;
- 19 5) The scheduling of a final approval hearing date to consider whether the Settlement should  
20 be finally approved and to award an amount for service payments to Plaintiffs, and  
21 attorneys’ fees and costs to Plaintiffs’ counsel;
- 22 6) Leave to file the proposed Second Amended Complaint;
- 23 7) Appointment of Phoenix Settlement Administrators, Inc. as the third-party Settlement  
24 Administrator; and
- 25 8) Approval of the proposed Class Notice, and an order that it be disseminated to the proposed  
26 Settlement Class as provided in the Settlement.

1 This motion is based on this notice of motion; the attached memorandum of points and  
2 authorities; the declaration of Hunter Pyle and exhibits attached thereto; the declaration of Carolyn  
3 Bell; the pleadings and other papers filed in this action; and any further oral or documentary  
4 evidence or argument presented at the time of hearing.

5 Respectfully Submitted,

6 Dated: April 12, 2021

HUNTER PYLE LAW

7  
8  
9 By:  \_\_\_\_\_

Hunter Pyle

10  
11 *Attorneys for Erik Contreras, Omar Dominguez,*  
12 *Ivan Landeros, Guillermo Mendez, Alejandro Olivera*  
*and the Putative Class*

13 Dated: April 12, 2021

AEGIS LAW FIRM, PC

14  
15  
16 By:  \_\_\_\_\_

Samuel Wong

Jessica Campbell

Carolyn Bell

17  
18  
19 *Attorneys for Erik Contreras, Omar Dominguez,*  
20 *Ivan Landeros, Guillermo Mendez, Alejandro Olivera*  
*and the Putative Class*

**TABLE OF CONTENTS**

1

2 I. Introduction..... 1

3 II. Summary of the Litigation..... 3

4 A. Factual and Procedural Background ..... 3

5 B. Defendants’ Previous Class Action and PAGA Settlements ..... 4

6 C. Investigation and Settlement..... 5

7 D. Reasons for The Parties’ Settlement ..... 6

8 III. The Proposed Settlement ..... 6

9 A. Essential Terms of The Settlement ..... 6

10 1. Settlement Class Definition ..... 6

11 2. Settlement Amount ..... 7

12 3. The Settlement Is Neither Claims-Made Nor Reversionary ..... 8

13 4. Administration of Class Notice, Opt-Out and Objections ..... 9

14 5. Calculation of Payments and Distribution to Settlement Class

15 Members ..... 10

16 6. Mailing of Checks..... 11

17 IV. The Court Should Approve The Proposed Settlement..... 11

18 A. The Proposed Settlement Meets The Standards For Preliminary Approval ..... 11

19 1. Standard for Preliminary Approval..... 12

20 2. The Settlement is Within the Range of Reasonableness..... 12

21 3. The Settlement is Reasonable in Light of Significant Litigation Risks..... 12

22 i. Failure to Pay All Wages Due ..... 14

23 a. The Reasonable Settlement Value of the Failure to Pay

24 All Wages Due Claim ..... 15

25 ii. The Meal Period Claim ..... 16

26 a. The Reasonable Settlement Value of the Meal Period

27 Claim..... 16

28 iii. The Rest Period Claim ..... 17

a. The Reasonable Settlement Value of the Rest Period

Claim..... 17

1	iv.	The Unreimbursed Business Expenses Claims.....	18
2	a.	The Reasonable Settlement Value of the Unreimbursed Business Expenses Claim .....	18
3	v.	The Waiting Time Penalties Claim.....	19
4	a.	The Reasonable Settlement Value of the Waiting Time Penalties Claim .....	19
5	vi.	The Wage Statement Claim .....	20
6	a.	The Reasonable Settlement Value of the Wage Statement Claim.....	20
7	vii.	The PAGA Penalties .....	21
8	a.	The Reasonable Settlement Value of the PAGA Penalties Claim. ....	22
9	b.	The LWDA has been Notified of the PAGA Settlement.....	22
10	viii.	The Unfair Competition Claim .....	22
11	4.	The Settlement is the Product of Non-Collusive, Arm’s-Length and Informed Negotiations .....	22
12	5.	The Experience and Views of Plaintiffs’ Counsel Favor Settlement Approval .....	23
13	6.	The Proposed Release is Narrowly Tailored .....	24
14	7.	The Proposed Class Notice Satisfies the Rules of Court .....	24
15	V.	The Court Should Provisionally Certify The Settlement Class .....	25
16	A.	The Proposed Settlement Class is Ascertainable and Numerous.....	25
17	B.	Common Issues of Law and Fact Predominate For Settlement Purposes .....	26
18	C.	The Claims of The Proposed Class Representatives Are Typical .....	26
19	D.	The Proposed Class Representatives and Counsel Will Adequately Represent The Class.....	26
20	VI.	The Court Should Approve The Class Notice of Settlement and Set A Final Approval Hearing.....	27
21	VII.	Conclusion .....	27
22			
23			
24			
25			
26			
27			
28			

**TABLE OF AUTHORITIES**

**CASES**

*Alonzo v. Maximus, Inc.*  
(C.D. Cal. 2011) 275 F.R.D. 513 ..... 26

*B.W.I. Custom Kitchen v. Owens-Illinois*  
(1987) 191 Cal. App. 3d 1341 ..... 26

*Benton v. Telecom Network Specialists, Inc.*  
(2013) 220 Cal. App. 4th 701 ..... 26

*Brinker Restaurant Corp. v. Sup. Ct.*  
(2012) 53 Cal. 4th 1004 ..... 16

*Capital People First v. State Dept. of Developmental Svcs.*  
(2007) 155 Cal. App. 4th 676 ..... 26

*Clark v. American Residential Services LLC*  
(2009) 175 Cal. App. 4th 785 ..... 12

*Hanlon v. Chrysler Corp.*  
(9th Cir. 1998) 150 F.3d 1011 ..... 11

*In Re Omnivision Technologies, Inc.*  
(N.D. Cal. 2008) 559 F. Supp. 2d 1036 ..... 23

*In re Syncor ERISA Litig.*  
(9th Cir. 2008) 516 F.3d 1095 ..... 11

*Kullar v. Foot Locker Retail, Inc.*  
(2008) 168 Cal. App. 4th 116 ..... 11, 12, 23

*Ling v. P.F. Chang’s China Bistro, Inc.*  
(2016) 245 Cal. App. 4th 1242 ..... 19

*Naranjo v. Spectrum Security Services, Inc.*  
(2019) 40 Cal.App.5th 444 ..... 19

*Reed v. United Teachers Los Angeles*  
(2012) 208 Cal. App. 4th 322 ..... 11

*Robinson v. Southern Counties Oil Company*  
(2020) 53 Cal.App.5th 476 ..... 9

*Sav-On Drug Store, Inc. v. Sup. Ct.*  
(2004) 34 Cal. 4th 319 ..... 26

*Sevidal v. Target Corp.*  
(2010) 189 Cal. App. 4th 905 ..... 25

*Wershba v. Apple Computer, Inc.*  
(2001) 91 Cal. App. 4th 224 ..... 12, 22, 24, 25

1 **STATUTES**

2 California Code of Civil Procedure

3 Section 382..... 1, 25, 27

4 California Labor Code

5 Section 201..... 19

6 Section 202..... 19

7 Section 203..... 19

8 Section 226..... 20

9 Section 226.2..... 14, 17, 20

10 Section 226.3..... 20

11 Section 226.7..... 16, 17, 19

12 Section 512..... 16

13 Section 2699..... 21

14 Section 2802..... 18

15 **OTHER AUTHORITIES**

16 Industrial Welfare Commision Wage Order 9 ..... 14, 16, 17, 20

17 **RULES**

18 California Rules of Court

19 Rule 3.766 ..... 25

20 Rule 3.769 ..... 1, 11, 21, 24

21 Federal Rules of Civil Procedure

22 Rule 23 ..... 11

23 **REGULATIONS**

24 8 California Code of Regulations

25 Section 13520..... 19

26

27

28



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Rule 3.769 of the California Rules of Court, plaintiffs Alejandro Olivera, Erik  
4 Contreras, Omar Dominguez, Ivan Landeros, Guillermo Mendez, and Alejandro Olivera (collectively,  
5 “Plaintiffs”), the named Plaintiffs in the proposed Second Amended Complaint,<sup>1</sup> respectfully request  
6 that this Court grant preliminary approval of the Joint Stipulation for Class and PAGA Representative  
7 Action Settlement and Release of Claims (the “Settlement” or “Settlement Agreement”) agreed to by  
8 Plaintiffs and Defendants C & B Delivery Service, a California corporation doing business as Temco  
9 Warehouses & Distribution; and Home Express Delivery Service, LLC, a California Limited Liability  
10 Company doing business as Temco Logistics (collectively, “Defendants”). Plaintiffs and Defendants  
11 are collectively referred to herein as the “Parties.”

12 Plaintiffs are former drivers and/or helpers who worked for Defendants in California.  
13 Plaintiffs and Settlement Class Members deliver and install products such as dishwashers, washer and  
14 dryers, and refrigerators purchased by Defendants’ customers. (See Pyle Decl., ¶ 20.)

15 The Settlement, which is attached as Exhibit 1 to the Pyle Decl., is not a claims-made  
16 settlement. (Pyle Decl., ¶ 3 & Exhibit 1 (“Settlement”).) It includes the following essential terms:

- 17 1) A Settlement Class<sup>2</sup> comprised of all current and former drivers and helpers who were  
18 employed by Defendants working out of Defendants’ Pomona warehouse from May 25,  
19 2020 through December 4, 2020, or any of Defendants’ other warehouses throughout

20  
21 <sup>1</sup> The Settlement resolves this action, filed by plaintiff Alejandro Olivera on May 26, 2020 in  
22 Alameda County Superior Court, Case No. RG20062287 (the “*Olivera Action*”), and an action filed  
23 by Guillermo Mendez, Erik Contreras, Omar Dominguez, and Ivan Landeros on August 19, 2020 in  
24 Los Angeles Superior Court, Case No. 20STCV31975 (the “*Mendez Action*”) (the *Olivera Action*  
25 and the *Mendez Action* are collectively referred to herein as the “*Litigation*”), in which Plaintiffs  
26 have alleged various wage and hour violations on a class wide basis, as well as related PAGA  
27 claims. (See Declaration of Hunter Pyle in Support of Plaintiffs’ Motion for Preliminary Approval  
28 (“Pyle Decl.”) ¶¶ 22-25.) Within ten business days of the Court granting preliminary approval of  
the Settlement, Plaintiffs will file the proposed Second Amended Complaint in this case, which  
adds the named plaintiffs from the *Mendez Action* and the claims brought on behalf of drivers and  
helpers in that case. (*Id.* at ¶¶ 2, 25 & Exhibit 2 (“Second Amended Complaint”).) The proposed  
Second Amended Complaint is attached to the Pyle Decl. as Exhibit 2.

<sup>2</sup> Unless otherwise defined herein, all capitalized terms herein have the same meanings as those in  
the Settlement Agreement.

1 California at any time between May 26, 2016 through December 4, 2020. (Settlement, ¶  
2 23.)

3 2) A non-reversionary Gross Settlement Amount of \$1,068,500.00, that includes the PAGA  
4 Settlement, Settlement Administrative Costs, Service Payments to the Plaintiffs, and  
5 Plaintiffs' counsel's attorneys' fees and litigation costs, pending this Court's approval.  
6 (Settlement, ¶¶ 22, 57.) These amounts, pending Court approval, are as follows:

7 a. A PAGA Settlement payment totaling \$50,000.00, with 75% or \$37,500.00 paid  
8 to the California Labor and Workforce Development Agency ("LWDA") and the  
9 remaining 25% or \$12,500.00 paid to the PAGA Employees. (Settlement, ¶¶ 18,  
10 55(b), 68.)

11 b. Settlement Administrative Costs of up to \$15,000.00. (Settlement, ¶¶ 1, 43.)

12 c. Service Payments of up to \$7,500.00 to each of the Plaintiffs. (Settlement, ¶ 62.)

13 d. An award of up to one-third of the Gross Settlement Amount (currently  
14 \$356,166.67) in attorneys' fees and up to \$50,000.00 in reimbursement of  
15 litigation costs to Plaintiffs' counsel. (Settlement, ¶¶ 58-61; *see also* Pyle Decl., ¶  
16 44.)

17 3) The Net Settlement Amount is the Gross Settlement Amount minus the PAGA Settlement,  
18 Settlement Administrative Costs, Service Payments to the Plaintiffs, and Plaintiffs'  
19 counsel's attorneys' fees and costs, pending this Court's approval. Upon approval of the  
20 Court, the Net Settlement Amount of approximately \$559,883.33 will be allocated to  
21 approximately 313 Settlement Class Members on a pro rata basis according to the number  
22 of weeks each Settlement Class Member worked during the Class Period. (Settlement, ¶¶  
23 12-13, 55, 83; *see also* Pyle Decl., ¶¶ 37-46.) The PAGA Settlement allocated to PAGA  
24 Employees is currently projected to be an additional \$12,500.00. (Settlement, ¶¶ 15-18,  
25 55(b); *see also* Pyle Decl., ¶¶ 37, 41, 46.)

26 As discussed below, the Settlement satisfies all criteria for preliminary approval under  
27 California law and falls well within the range of reasonableness. The Settlement was reached  
28

1 through informed, arms-length bargaining at and after mediation between experienced attorneys.  
2 Accordingly, the Parties respectfully request that the Court enter an Order (1) preliminarily approving  
3 the proposed Settlement; (2) provisionally certifying the Settlement Class; (3) provisionally  
4 approving the appointment of Alejandro Olivera, Guillermo Mendez, Erik Contreras, Omar  
5 Dominguez, and Ivan Landeros as Class Representatives; (4) provisionally approving the  
6 appointment of Hunter Pyle Law and AEGIS Law Firm P.C. as Class Counsel; (5) setting a final  
7 fairness and approval hearing; (6) Leave to file a Second Amended Complaint; (7) appointing  
8 Phoenix Settlement Administrators, Inc. (“Phoenix”) as the third-party Settlement Administrator; and  
9 (8) approving and directing distribution of a Notice of Settlement of Class Action (“Class Notice”)  
10 to the Settlement Class (attached as Exhibit A to the Settlement Agreement).

11 **II. SUMMARY OF THE LITIGATION**

12 **A. FACTUAL AND PROCEDURAL BACKGROUND**

13 Defendants are in the logistics business. Defendants contract with retail stores such as Costco,  
14 Home Depot, and JCPenney to provide delivery, installation, and disposal services for customers who  
15 purchase their products. (Pyle Decl., ¶ 20.) Plaintiffs and Settlement Class Members perform the  
16 arduous work of delivering and installing home appliances. (*Ibid.*)

17 Plaintiff Alejandro Olivera filed the *Olivera* Action on May 26, 2020, in Alameda County  
18 Superior Court alleging the following wage and hour violations: 1) failure to pay minimum wages; 2)  
19 failure to pay overtime wages; 3) failure to provide meal periods; 4) failure to permit rest breaks; 5)  
20 failure to furnish adequate wage statements; 6) failure to pay all wages due upon separation of  
21 employment; and 7) unfair business practices in violation of Business and Professions Code §§ 17200,  
22 *et seq.* (Pyle Decl., ¶ 21.) Plaintiff Olivera filed a First Amended Complaint on August 25, 2020,  
23 adding a claim for PAGA violations. (*Ibid.*)

24 On August 19, 2020, plaintiffs Guillermo Mendez, Erik Contreras, Omar Dominguez, and Ivan  
25 Landeros filed the *Mendez* Action in Los Angeles County Superior Court, Case No. 20STCV31975.  
26 The *Mendez* Action alleges that Defendants: 1) failed to pay minimum wages; (2) failed to pay  
27 overtime wages; (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to pay  
28

1 all wages to piece-rate workers for rest breaks; (6) failed to reimburse business expenses; (7) failed to  
2 provide accurate itemized wage statements; (8) failed to pay all wages due upon separation of  
3 employment; and (9) violation of Business and Professions Code §§ 17200, *et seq.* (See Declaration  
4 of Carolyn Bell in Support of Plaintiffs’ Motion for Preliminary Approval (“Bell Decl.”), ¶¶ 1-4.) On  
5 August 26, 2020, plaintiffs in the *Mendez* Action filed a First Amended Complaint to name an  
6 additional Defendant. (*Id.* at ¶ 5.)

7 The Settlement resolves the *Olivera* and *Mendez* actions. If the Court grants preliminary  
8 approval of the Settlement, Plaintiffs will file a Second Amended Complaint in this case, adding the  
9 named plaintiffs from the *Mendez* Action and the claims brought on behalf of drivers and helpers in  
10 that case. (Pyle Decl., ¶¶ 3, 20-25 & Exhibit 2.)

11 **B. DEFENDANTS’ PREVIOUS CLASS ACTION AND PAGA SETTLEMENTS**

12 Defendants recently settled the following cases alleging claims similar to those in this  
13 Litigation:<sup>3</sup>

14 (1) *Acevedo v. Temco* (Los Angeles Superior Court Case Number: 19STCV07499), filed on  
15 March 5, 2019. *Acevedo* alleges class-only claims for wage and hour violations at a single  
16 location in Pomona, California. *Acevedo* is scheduled for a preliminary approval hearing in  
17 April 2021; and

18 (2) *Lopez v. Temco* (San Diego County Superior Court Case Number 37-2019-00027884-CU-  
19 OE-CTL), a PAGA-only action, filed on May 30, 2019. The *Lopez* court approved a PAGA-  
20 only settlement on June 26, 2020. (Pyle Decl., ¶ 26.)

21 By design, the Settlement in this Litigation does not overlap with the claims settled in *Acevedo*  
22 or *Lopez*. (Pyle Decl., ¶ 26.)

23  
24  
25  
26  
27 <sup>3</sup> Defendants also recently settled a class action lawsuit in Washington state. (*Heard, et al. v. Home*  
28 *Express Delivery Service, LLC, et al. (d/b/a Temco Logistics)*, King County Superior Court Case  
No. 20-2-07098-0; see also Pyle Decl., ¶ 26.)

1           **C.       INVESTIGATION AND SETTLEMENT**

2           Plaintiffs’ counsel have conducted a thorough investigation into the facts relevant to the  
3 Litigation and have diligently pursued an investigation of Settlement Class Members’ claims against  
4 Defendants. Among other things, Plaintiffs’ counsel have reviewed a large volume of information and  
5 data regarding the claims asserted in the Litigation, the defenses available to Defendants, and  
6 Defendants’ financial condition. (Pyle Decl., ¶ 27.)

7           For example, Defendants produced, and Plaintiffs’ counsel reviewed and analyzed, relevant  
8 wage and hour policies including meal period and rest break policies, multiple employee handbooks,  
9 and a ten percent (10%) sample of the Settlement Class Members’ payroll and time records. (Pyle  
10 Decl., ¶ 28.) Plaintiffs’ counsel have also reviewed other documents and data related to Settlement  
11 Class Members’ employment with Defendants, including piece rate records, wage statements, and  
12 dates of employment. (*Ibid.*)

13           Plaintiffs’ counsel determined under what circumstances a potential violation of law could be  
14 identified. (Pyle Decl., ¶ 29.) Plaintiffs’ counsel then retained a damages expert to calculate the  
15 violation rates and potential exposure of the claims alleged in the Litigation. (*Ibid.*)

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

20           In response, Plaintiffs requested, and Defendants produced, a variety of documents relevant to  
21 their financial position. (Pyle Decl., ¶ 31.) Plaintiffs then retained an expert to review Defendants’  
22 financial documents. (*Ibid.*) The expert advised Plaintiffs’ counsel as to Defendants’ financial  
23 condition and outlook. Plaintiffs’ counsel then incorporated their expert’s opinion into their  
24 assessment of the case. (*Ibid.*)

25           Prior to mediation, the Parties met and conferred and agreed to an informal discovery plan that  
26 would allow them to productively move forward with informal settlement discussions. (Pyle Decl., ¶  
27 32.) Based on this informal discovery, Plaintiffs provided the mediator with a detailed analysis of  
28

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

3 On November 4, 2020, the Parties attended an all-day mediation with mediator Michael Loeb.  
4 (Pyle Decl., ¶ 33.) The Parties did not resolve the matter at mediation, but continued to engage in  
5 arms-length negotiations with the assistance of the mediator. (*Ibid.*) Ultimately, the Parties reached a  
6 settlement in principal based on a mediator's proposal. The principal terms of the Parties' agreement  
7 were outlined in a Memorandum of Understanding. (*Ibid.*) The Parties thereafter negotiated the terms  
8 of the Settlement Agreement. (*Ibid.*)

#### 9 **D. REASONS FOR THE PARTIES' SETTLEMENT**

10 Plaintiffs recognize the expense and length of protracted proceedings necessary to continue the  
11 Litigation against Defendants through trial and through any possible appeals. (Pyle Decl., ¶ 35.)  
12 Plaintiffs also gave appropriate weight to Defendants' assertion that they are in dire financial  
13 circumstances. (*Ibid.*)

14 Plaintiffs have also taken into account the uncertainty and risk of further litigation, including  
15 the risk of significant delay, the risk that if the matter is litigated a class may not be certified by the  
16 Court or that it may later be decertified, and potential appellate issues. (Pyle Decl., ¶ 36.) Plaintiffs are  
17 also aware of the burdens of proof necessary to establish liability for the claims asserted in the  
18 Litigation, Defendants' defenses thereto, and the difficulties in establishing damages. (*Ibid.*)

### 19 **III. THE PROPOSED SETTLEMENT**

#### 20 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

21 The Settlement Agreement provides that Defendants shall pay the Gross Settlement Amount  
22 of \$1,068,500 to resolve the claims alleged in the Litigation. (Settlement, ¶ 22.) The essential terms of  
23 the Settlement are as follows:

##### 24 **1. Settlement Class Definition**

25 The Settlement Class is defined as: All current and former drivers and helpers who were  
26 employed by Defendants working out of Defendants' Pomona warehouse from May 25, 2020 through  
27 December 4, 2020, or any of Defendants' other warehouses throughout California at any time between  
28

1 May 26, 2016 through December 4, 2020. (Settlement, ¶ 23.) Defendants represent that there are 313  
2 Settlement Class Members. (*Id.* at ¶ 83.)

### 3                   2.       Settlement Amount

4           The sum of \$1,068,500.00<sup>4</sup> that Defendants agree to pay to settle this Litigation shall include  
5 all Net Settlement Payments to Participating Class Members, the PAGA Settlement, Settlement  
6 Administrative Costs, Service Payments to the Plaintiffs, and Plaintiffs’ counsel’s attorneys’ fees and  
7 litigation costs, pending this Court’s approval. (Settlement, ¶ 22; *see also* Pyle Decl., ¶ 37.)

8           Given Defendants’ financial position, including the recent settlement of three other class and/  
9 or PAGA actions and the loss of a major account, Defendants required a payment plan to fund the  
10 Settlement. (Pyle Decl., ¶ 40.) Plaintiffs negotiated the payment plan with Defendants to conclude  
11 payments as early as possible, within thirteen months of the preliminary approval hearing. (*Ibid.*)

12           Pursuant to the Settlement, Defendants shall fund the Gross Settlement Amount as follows: On  
13 or before the earlier of September 1, 2021, or within 14 calendar days after the Date of Final Approval,  
14 Defendants will deposit \$100,000.00 with the Settlement Administrator for the benefit of the  
15 Participating Class Members. On or before January 1, 2022, Defendants shall deposit \$484,250.00  
16 into the same account. On or before June 1, 2022, Defendants shall deposit a final payment of  
17 \$484,250.00. (Settlement, ¶ 54; *see also* Pyle Decl., ¶ 40.)

18           The Settlement Agreement provides that any and all claims for PAGA penalties alleged in the  
19 Litigation have been settled for the amount of \$50,000.00, which shall be allocated as follows: 75%  
20 (\$37,500.00) shall be paid to the California Labor and Workforce Development Agency (“LWDA”)  
21 and 25% (\$12,500.00) shall be allocated to the PAGA Settlement, to be distributed to PAGA  
22 Employees. (Settlement, ¶¶ 15-18, 55(b), 68; *see also* Pyle Decl., ¶ 41.)

23  
24  
25 \_\_\_\_\_  
26 <sup>4</sup> The Gross Settlement Amount is conditioned on representations made concerning the number of  
27 employees that were employed within the Settlement Period. (Settlement, ¶ 83.) Specifically,  
28 Defendants have represented that 313 individuals worked a total of 15,080 workweeks within the  
Settlement Period. (*Ibid.*) In the event these figures change and the number of Participating Class  
Members and/or the number of workweeks worked by Participating Class Members, increases by  
more than ten percent (10%), the Gross Settlement Amount will increase pro rata per additional  
Participating Class Member or additional workweek. (*Ibid.*)

1 The Settlement Administrative Costs shall not exceed \$15,000.00 and will be deducted from  
2 the Gross Settlement Amount upon approval by the Court. (Settlement, ¶¶ 1, 12, 43; *see also* Pyle  
3 Decl., ¶ 42.)

4 Plaintiffs' counsel will apply to the Court for an award of \$7,500.00 to be paid to each of the  
5 Plaintiffs as a service payment in recognition of their service to the Settlement Class (\$37,500.00  
6 total). (Settlement, ¶ 62; *see also* Pyle Decl., ¶ 43.)

7 The Settlement Agreement permits Plaintiffs' counsel to apply to the Court for an award of  
8 attorneys' fees not to exceed one-third the Gross Settlement Amount, or \$356,166.67, plus actual  
9 litigation costs not to exceed \$50,000.00. (Settlement, ¶¶ 58-61; *see also* Pyle Decl., ¶ 44.)

10 The Net Settlement Amount is the Gross Settlement Amount minus the PAGA Settlement,  
11 Settlement Administrative Costs, Service Payments to the Plaintiffs, and Plaintiffs' counsel's  
12 attorneys' fees and expenses, pending this Court's approval. The Net Settlement Amount is currently  
13 estimated to be \$559,883.33 and the PAGA Settlement allocated to PAGA Employees is currently  
14 projected to be an additional \$12,500 as follows:

15	<b>Gross Settlement Fund:</b>	<b>\$1,068,500.00</b>
16	Less PAGA Settlement	-\$ 50,000.00
17	Less Settlement Administration	-\$ 15,000.00
18	Less Enhancement Awards	-\$ 37,500.00
19	Less Attorneys' Fees	-\$ 356,166.67
20	<u>Less Litigation Costs</u>	<u>-\$ 50,000.00</u>
21	<b>NET SETTLEMENT FUND</b>	<b>\$ 559,883.33</b>
22	 	
23	<b>PAGA Settlement:</b>	<b>\$ 50,000.00</b>
24	<u>Less Payment to LWDA</u>	<u>-\$ 37,500.00</u>
25	<b>PAYMENT TO PAGA EMPLOYEES</b>	<b>\$ 12,500.00</b>

26 (Pyle Decl., ¶ 45.)

### 27 3. The Settlement Is Neither Claims-Made Nor Reversionary

28 This is not a claims-made Settlement. (Settlement, ¶ 52.) Participating Class Members will  
receive a portion of the Net Settlement Amount as long as they do not opt-out of the Settlement. (*Ibid.*)  
All PAGA Employees will receive their portion of the PAGA Settlement. (*Ibid.*; *see also* Pyle Decl.,  
¶ 46.)



1 The Settlement is also non-reversionary. (Settlement, ¶ 57; *see also* Pyle Decl., ¶ 47.) Under  
2 no circumstances will the Gross Settlement Amount or any portion thereof revert back to Defendants.  
3 (*Ibid.*)

#### 4 4. Administration of Class Notice, Opt-Out and Objections

5 The Parties have agreed that Phoenix will serve as the Settlement Administrator. (Settlement,  
6 ¶ 21; Pyle Decl., ¶ 49.) The Settlement Administrator shall mail a Class Notice, including a  
7 computation of the amount of each Settlement Class Member’s share of the Net Settlement Amount  
8 and PAGA Settlement, to all Settlement Class Members, whose names and addresses Defendants will  
9 provide to the Settlement Administrator. (Settlement, ¶ 45.) The Class Notice is attached as Exhibit A  
10 to the Settlement Agreement. (*Id.* at Exhibit A; *see also* Pyle Decl., ¶ 51.)

11 The Class Notice informs each Settlement Class Member of their right to object to and opt-out  
12 of the Settlement. (Settlement, ¶¶ 4, 14, 45, Exhibit A; *see also* Pyle Decl., ¶ 52.) The Class Notice  
13 provides instructions for Settlement Class Members to object to the Settlement, to opt-out of the  
14 Settlement or to dispute the computation of the Settlement Class Members’ share of the Net Settlement  
15 Amount and PAGA Settlement. (*Ibid.*)

16 Settlement Class Members will have sixty (60) days in which to postmark objections, disputes,  
17 and requests for exclusion. (Settlement, ¶ 48.) Plaintiffs’ counsel, after consulting with defense  
18 counsel, will make a recommendation as to a resolution of the challenge. (*Ibid.*) In the event that the  
19 Parties are unable to agree on a resolution, the matter will be submitted to the Settlement Administrator  
20 for a final determination. (*Ibid.*) Individuals who do not submit valid and timely requests for exclusion  
21 shall be deemed Participating Class Members. (*Id.* at ¶¶ 19, 51; *see also* Pyle Decl., ¶ 53.)

22 Settlement Class Members who submit valid and timely requests for exclusion will not be  
23 Participating Class Members and will not be bound by the terms of the Settlement. (Settlement, ¶¶ 19,  
24 51; *see also* Pyle Decl., ¶ 54.) However, Settlement Class Members that worked during the PAGA  
25 Settlement Period cannot opt-out of the PAGA Settlement. (*See Robinson v. Southern Counties Oil*  
26 *Company* (2020) 53 Cal.App.5th 476, *review denied* (Nov. 24, 2020); *see also* Settlement, ¶ 52; Pyle  
27 Decl., ¶ 54.)

1                   **5. Calculation of Payments and Distribution to Settlement Class Members**

2           Each Participating Class Member will receive a share of the Net Settlement Amount and  
3 PAGA Settlement based on their length of employment with Defendants during the Settlement Period  
4 and PAGA Settlement Period. (Settlement, ¶¶ 17, 25, 55.) For tax reporting, the Net Settlement  
5 Payments to the Participating Class Members will be characterized as twenty percent (20%) wages,  
6 seventy percent (70%) penalties, and ten percent (10%) interest. (*Id.* at ¶ 65.) Payments from the  
7 PAGA Settlement will be characterized as one hundred percent (100%) penalties. (*Id.* at ¶ 66.) All  
8 payroll taxes will be paid by Defendants separate from and in addition to the Gross Settlement  
9 Amount. (*Id.* at ¶ 64.)

10           Phoenix shall calculate each Settlement Class Member’s Net Settlement Payment as follows:

11           Each Participating Class Member shall receive a proportionate share that is equal to (i) the  
12 number of workweeks they worked during the time period from May 26, 2016, through December 4,  
13 2020, or for Participating Class Members that worked in the Pomona Warehouse, the number of  
14 workweeks they worked during the time period from May 25, 2020 through December 4,  
15 2020, divided by (ii) the total number of workweeks worked by Participating Class Members that  
16 worked in the Pomona Warehouse from May 25, 2020 through December 4, 2020 plus the workweeks  
17 worked by all other Participating Class Members during the time period from May 26, 2016, through  
18 December 4, 2020. (Settlement, ¶ 55(a).)

19           Phoenix shall calculate each PAGA Employee’s Individual PAGA Payment as follows:

20           From the \$50,000 allocated to PAGA penalties, one-quarter (25%) (\$12,500) shall be  
21 distributed to the PAGA Employees, which shall consist of all Settlement Class Members who were  
22 employed at any time during the time period from June 27, 2020 through December 4, 2020. Each  
23 PAGA Employee will receive a proportionate share of money allocated to the PAGA Employees that  
24 is equal to (i) the number of pay periods they worked during the time period from June 27, 2020<sup>5</sup>  
25 through December 4, 2020 divided by (ii) the total number of pay periods worked by all PAGA  
26

27 \_\_\_\_\_  
28 <sup>5</sup> PAGA penalties are only available to Settlement Class Members after June 26, 2020, due to the  
Lopez Settlement, which released Settlement Class Members’ PAGA penalties prior to that date.  
(Pyle Decl., ¶ 91.)

1 Employees during the time period from June 27, 2020 through December 4, 2020. The remaining  
2 three-quarters (75%) (\$37,500) of the PAGA Settlement shall be distributed to the LWDA.  
3 (Settlement, ¶ 55(b).)

#### 4 **6. Mailing of Checks**

5 Within 15 calendar days after Defendants fully fund the Settlement, the Settlement  
6 Administrator will make all disbursements under the Settlement Agreement. (Settlement, ¶ 56.) The  
7 checks will remain negotiable for 180 days from the date of mailing. (*Id.* at ¶ 57.)

8 Any funds that remain from uncashed or unclaimed settlement checks shall be distributed to  
9 Legal Aid at Work, the *cy pres* charity agreed upon by the Parties. (Settlement, ¶ 57.)

### 10 **IV. THE COURT SHOULD APPROVE THE PROPOSED SETTLEMENT**

#### 11 **A. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR** 12 **PRELIMINARY APPROVAL**

13 California Rule of Court 3.769 conditions settlement of a class action on court approval, which  
14 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of  
15 Civil Procedure. (*See Reed v. United Teachers Los Angeles* (2012) 208 Cal. App. 4th 322, 337 (Rule  
16 3.769 requires the trial court to determine “that the settlement is fair, reasonable and adequate to all  
17 concerned”); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires court  
18 to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”).)

19 Settlement is the preferred means of resolution, particularly in complex class action litigation.  
20 (*See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court’s role in evaluating a  
21 proposed settlement is to ensure that the agreement taken as a whole is fair and is within the range of  
22 reasonableness. (*See, e.g., Hanlon*, 150 F.3d at 1027.) There is an initial presumption of fairness when  
23 the settlement agreement was negotiated at arm’s-length by plaintiffs’ counsel. (*See, e.g., Kullar v.*  
24 *Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 130.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**1. Standard for Preliminary Approval**

To make a fairness determination, the Court should consider several factors, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.) “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” (*Ibid.*)

For the reasons set forth below, the Court should find that the Settlement is fair, reasonable and adequate.

**2. The Settlement is Within the Range of Reasonableness**

The Settlement results in a substantial benefit to all Settlement Class Members. (Pyle Decl., ¶ 56.) Participating Class Members will receive an award based on their total number of work weeks worked during the Settlement Period. (Settlement, ¶¶ 25, 55(a).) PAGA Employees will receive an award based on their total number of pay periods worked during the PAGA Settlement Period. (Settlement, ¶¶ 17, 55(b).) Based on the Gross Settlement Amount, the average anticipated award will be \$3,413.74 to each Participating Class Member. (Pyle Decl., ¶ 56.) Accordingly, the Settlement provides meaningful relief for the disputed Labor Code violations and is well within the range of reasonableness. (*Ibid.*)

**3. The Settlement is Reasonable in Light of Significant Litigation Risks**

The Court must make an “independent assessment of the reasonableness of the terms of the settlement” prior to granting preliminary and final approval. (*Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 799; *Kullar*, 168 Cal. App. 4th at 127-128, 130, 133.) To do so requires the Parties to submit “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Clark*, 175 Cal. App. 4th at 800. However, the Court should not

1 “attempt to decide the merits of the case or to substitute its evaluation of the most appropriate  
2 settlement for that of the attorneys.” (*Kullar*, 168 Cal. App. 4th at 133.)

3 While Plaintiffs and their counsel believe that this is a strong case, the significant risks and  
4 expenses associated with class certification and liability proceedings must be taken into account. (Pyle  
5 Decl., ¶ 57.) The value of the Settlement recognizes the risks of obtaining class certification,  
6 maintaining class certification throughout trial, proving liability, obtaining a judgment, and surviving  
7 appeals. (*Ibid.*)

8 Moreover, Plaintiffs’ may face challenges when it comes to class certification purposes. (Pyle  
9 Decl., ¶ 58.) This is because Settlement Class Members worked out of various warehouse locations  
10 throughout California, and Defendants contend that their pay practices were not always uniform  
11 between each location. (*Ibid.*)

12 Prior to engaging in settlement discussions, Plaintiffs retained an expert, David Breshears, to  
13 calculate Defendants’ maximum exposure. (Pyle Decl., ¶ 59.) Mr. Breshears reviewed the documents  
14 and data produced by Defendants and calculated that Defendants’ maximum potential exposure was  
15 \$9,265,673.68. (*Ibid.*)

16 However, Defendants have contended throughout this Litigation that they are in dire financial  
17 circumstances due to the recent loss of a major account, as well as the two recent class action  
18 settlements and one PAGA-only settlement described above. (Pyle Decl., ¶ 60.) Defendants have  
19 indicated that the loss of that major account will have a significant impact on their ability to pay any  
20 settlement or judgment. (*Ibid.*) In order to verify Defendants’ contentions, Plaintiffs requested, and  
21 Defendants produced, a variety of documents including proof of the loss of the major account,  
22 Defendants’ financial statements and information regarding Defendants’ lease agreements.

23 Plaintiffs then retained expert Vanessa Hill, a CPA and partner at the well-respected forensic  
24 accounting firm Evidentia Consulting, LLP to review Defendants’ financial documents. (Pyle Decl.,  
25 ¶ 31.) Ms. Hill advised Plaintiffs’ counsel as to Defendants’ financial condition and outlook. Plaintiffs’  
26 counsel incorporated Ms. Hill’s opinion into their assessment of the case. (*Ibid.*)

27  
28

1           Given these considerations, as set forth below, Plaintiffs' counsel assigned a reasonable  
2 settlement value to each of the claims asserted on behalf of the Settlement Class Members. (Pyle Decl.,  
3 ¶ 61.) Plaintiffs' counsel estimates the total reasonable settlement value of those claims to be  
4 \$1,039,386.93. (*Ibid.*) The Gross Settlement Amount therefore exceeds the reasonable settlement  
5 value of the Settlement Class Members' claims. (*Ibid.*)

6           Plaintiffs' counsel's analysis of the reasonable value of each of the claims made in the  
7 Litigation is as follows:

8                           **i.           Failure to Pay All Wages Due**

9           Plaintiffs allege that Defendants failed to pay all wages due resulting in unpaid minimum,  
10 overtime, and double time wages. (Pyle Decl., ¶ 62.) Specifically, Plaintiffs allege that Defendants (1)  
11 failed to pay Settlement Class Members for the non-productive hours they worked; (2) deducted time  
12 from Settlement Class Members' pay for meal periods they did not receive; (3) failed to compensate  
13 Settlement Class Members at their proper regular rate of pay for overtime and double time purposes  
14 by failing to incorporate commissions and bonus pay into the regular rate of pay; and (4) failed to  
15 separately pay Settlement Class Members for rest and recovery time at their proper regular rate of pay.  
16 Plaintiffs also allege liquidated damages for all instances where Defendants did not pay Settlement  
17 Class Members the minimum wage. (*Ibid.*) Plaintiffs allege that these violations have resulted in  
18 violations of Labor Code sections 226.2, 510, 1182.11-1182.13, 1194, 1194.2, 1197, 1198 and Wage  
19 Order 9. (*Ibid.*)

20           At the time of mediation, Plaintiffs' damages expert calculated the maximum value of the  
21 Settlement Class Members' damages for failure to pay all wages due and related liquidated damages  
22 to be \$5,259,129.03. (Pyle Decl., ¶ 63.) This valuation was based on the following assumptions: (1)  
23 Settlement Class Members were owed for non-productive time; (2) Defendants automatically deducted  
24 time from Settlement Class Members for purported meal periods that were not received, which time  
25 should have been compensated, but was not; (3) Defendants failed to calculate non-discretionary pay  
26 into the regular rate of pay for purposes of calculating overtime and double time pay; and (4) when  
27  
28

1 Settlement Class Members did not receive rest periods, rest period penalties were not paid at the  
2 Settlement Class Members' appropriate rate of pay. (*Ibid.*)

3 **a. The Reasonable Settlement Value of the Failure to Pay All Wages**  
4 **Due Claim**

5 However, Defendants have raised numerous defenses to Plaintiffs' claims for failure to pay all  
6 wages due. (Pyle Decl., ¶ 64.) Defendants contend, and an analysis of Settlement Class Members'  
7 payroll records shows, that, for a significant portion of the Settlement Period, Defendants' paystubs  
8 appeared to pay Settlement Class Members on an hourly basis. (*Ibid.*) As a result, Defendants' argue  
9 that the claims related to piece-rate compensation do not extend to the entire class period. (*Ibid.*)  
10 Defendants further contend that even if Settlement Class Members were paid on a piece-rate basis, all  
11 non-productive time was incidental to the productive work, and was therefore fully and lawfully  
12 compensated. (*Ibid.*)

13 Plaintiffs contend that Settlement Class Members were always in fact paid on a piece rate basis.  
14 (Pyle Decl., ¶ 65.) However, should a court find that Settlement Class Members were indeed paid on  
15 an hourly basis, this holding would greatly reduce the value of Settlement Class Members' claims for  
16 unpaid non-productive time and for failure to pay separately for rest periods. (*Ibid.*)

17 Moreover, Defendants argue that they did provide Settlement Class Members with legally  
18 compliant meal periods. Therefore, Defendants allege that Plaintiffs' claim for unpaid wages based on  
19 automatically deducted meal breaks is meritless. (Pyle Decl., ¶ 66.)

20 Given these circumstances, it is reasonable to discount the claims for failure to pay all wages  
21 due by thirty percent (multiplying by .70) to account for the risks involved in certifying a class and  
22 maintaining certification through trial, an additional thirty percent (multiplying by .70) to account for  
23 the risks that Defendants will prevail on their defenses at trial, and an additional seventy-five percent  
24 (multiplying by .25) to account for Defendants' financial circumstances. (Pyle Decl., ¶ 67.)

25 Accordingly, Plaintiffs determined that the reasonable settlement value of this claim was  
26 **\$644,243.31**. (*Ibid.*)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ii. The Meal Period Claim**

Plaintiffs allege that Defendants failed to satisfy California’s meal period laws, which require that an employee: “(1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period.” (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1036; Lab. Code § 512, Wage Order 9; *see also* Pyle Decl., ¶ 68.) Settlement Class Members are entitled to one additional hour of pay at their regular rate of compensation for each meal period violation. *See* Labor Code § 226.7. (Pyle Decl., ¶ 68.)

Plaintiffs contend that Defendants did not provide them with legally compliant meal periods pursuant to California law. (Pyle Decl., ¶ 69.) Plaintiffs’ expert calculated the maximum value of the Settlement Class Members’ damages for missed meal periods to be approximately \$1,252,828.24. (*Ibid.*) That figure is based on an extrapolation from a sample of Settlement Class Members’ time and pay records wherein the damages Plaintiffs’ expert assumed a missed meal period violation for each day a Settlement Class Member worked more than five hours, a 100% violation rate. (*Ibid.*)

**a. The Reasonable Settlement Value of the Meal Period Claim**

Defendants contend that they have implemented a lawful meal period policy that provides Settlement Class Members with the opportunity to take uninterrupted, off-duty meal breaks, and that Defendants did not require Settlement Class Members to work through their meal periods. (Pyle Decl., ¶ 70.) Defendants note that the law does not require them to police meal periods. (*Brinker*, 53 Cal. 4th 1004, 1040–41 (2012).)

Defendants further argue that Settlement Class Members were performing deliveries throughout the day and were permitted to take a meal period during their route. (Pyle Decl., ¶ 71.) Additionally, Defendants argue that Settlement Class Members submitted acknowledgment forms that they received meal breaks. (*Ibid.*) Moreover, Defendants indicate that they are prepared to argue on a motion for summary adjudication that Settlement Class Members were exempt from meal periods under the federal Motor Carrier Act exemption. (*Ibid.*)

Plaintiffs dispute Defendants’ arguments. (Pyle Decl., ¶ 72.) However, under these circumstances, it is reasonable to discount Plaintiffs’ meal period claim by forty percent (multiplying



1 by .60) to account for the risks involved in certifying a class and maintaining certification through  
2 trial, and by an additional forty percent (multiplying by .60) to account for the risks that Defendants  
3 will prevail on their defenses at trial, and an additional seventy five percent (multiplying by .25) to  
4 account for Defendants' financial circumstances. (*Ibid.*)

5 Accordingly, Plaintiffs determined that the reasonable settlement value of this claim was  
6 \$112,754.54. (Pyle Decl., ¶ 72.)

7 **iii. The Rest Period Claim**

8 Plaintiffs allege that Defendants have failed to comply with California law with respect to  
9 authorizing and permitting rest breaks. (Lab. Code § 226.2, Wage Order 9; Pyle Decl., ¶ 73.).  
10 Specifically, Plaintiffs allege that Defendants did not authorize and permit them to take a rest period  
11 of at least ten (10) minutes for every four (4) hours worked, or major fraction thereof, and to pay one  
12 (1) additional hour of pay at the regular rate of compensation for each workday that a proper rest  
13 period was not provided. *See* Labor Code § 226.7. Plaintiffs contend that they were regularly required  
14 to work through their rest periods. (Pyle Decl., ¶ 73.)

15 Plaintiffs' expert calculated the maximum value of the Settlement Class Members' claims for  
16 missed rest periods under Labor Code section 226.7 to be \$1,299,107.07. (Pyle Decl., ¶ 74.) Plaintiffs'  
17 expert assumed a missed rest period violation for each day a Settlement Class Member worked more  
18 than 3.5 hours. (*Ibid.*)

19 **a. The Reasonable Settlement Value of the Rest Period Claim**

20 As with meal periods, Defendants contend that they had a lawful rest period policy. (Pyle Decl.,  
21 ¶ 75.) Defendants state that Settlement Class Members were authorized to take rest breaks and were  
22 unsupervised during their workday. (*Ibid.*) Therefore, if Settlement Class Members did not take rest  
23 breaks, it was because they chose not to do so. (*Ibid.*) Moreover, Defendants are prepared to argue on  
24 a motion for summary adjudication that Settlement Class Members were exempt from rest periods  
25 under the federal Motor Carrier Act exemption. (*Ibid.*)

26 Plaintiffs dispute Defendants' arguments. (Pyle Decl., ¶ 76.) However, given these defenses,  
27 it is reasonable to discount Plaintiffs' rest period claim by forty percent (multiplying by .60) to account  
28

1 for the risks that Defendants will prevail on their defenses, and by an additional fifty percent  
2 (multiplying by .50) to account for the risk of Defendants prevailing to account for the risks involved  
3 in certifying a class and maintaining certification through trial, and an additional seventy five percent  
4 (multiplying by .25) to account for Defendants’ financial circumstances. (*Ibid.*)

5 Accordingly, Plaintiffs determined that the reasonable settlement value of this claim was  
6 \$97,433.03. (Pyle Decl., ¶ 76.)

7 **iv. The Unreimbursed Business Expenses Claims**

8 California law requires an employer to indemnify employees “for all necessary expenditures  
9 or losses incurred. . .in direct consequence of the discharge of his or her duties. . .” Lab. Code § 2802.  
10 Here, Plaintiffs allege that they installed and removed home appliances. However, Plaintiffs allege  
11 that Defendants had a policy and practice of requiring Settlement Class Members to purchase the tools  
12 and equipment necessary to perform these job duties. (Pyle Decl., ¶ 77.)

13 Accordingly, Plaintiffs’ damages expert calculated that Defendants owe Settlement Class  
14 Members business expenses totaling approximately \$156,500.00. (Pyle Decl., ¶ 78.) This amount was  
15 calculated based on the assumption that each Settlement Class Member was owed \$500.00 in  
16 unreimbursed business expenses for tools and equipment. (*Ibid.*)

17 **a. The Reasonable Settlement Value of the Unreimbursed Business**  
18 **Expenses Claim**

19 In response, Defendants contend that calculating how much each Settlement Class Member is  
20 owed will require individualized inquiries. (Pyle Decl., ¶ 79.) Plaintiffs anticipate that Defendants will  
21 oppose class certification by arguing that proving liability for the tools and equipment reimbursement  
22 claim is unmanageable because it will entail individualized inquiries to determine whether employees  
23 purchased their own tools and equipment, whether they were reimbursed, and the reasonable cost of  
24 the equipment. (*Ibid.*)

25 Under these circumstances, it is reasonable to discount Plaintiffs’ reimbursement claim by fifty  
26 percent (multiplying by .50) to account for the risks involved in certifying a class and maintaining  
27 certification through trial, and by an additional twenty percent (multiplying by .80) to account for the  
28

1 risks that Defendants will prevail on their defenses, and an additional seventy-five percent  
2 (multiplying by .25) to account for Defendants’ financial circumstances. (Pyle Decl., ¶ 80.)

3 Accordingly, Plaintiffs determined that the reasonable settlement value of this claim was  
4 \$15,650.00. (Pyle Decl., ¶ 80.)

5 **v. The Waiting Time Penalties Claim**

6 Plaintiffs allege that Defendants have had a policy and practice of failing to timely pay  
7 compensation and wages to its Settlement Class Members upon their termination or resignation from  
8 employment, as required by Labor Code sections 201 and 202. This claim is derivative of Plaintiffs’  
9 wage claims. (Pyle Decl., ¶ 81.)

10 Plaintiffs’ damages expert calculated the maximum waiting time penalties owed to Settlement  
11 Class Members whose employment terminated within three years prior to filing the Complaint to be  
12 \$842,359.34. (Pyle Decl., ¶ 82.) That figure reflects 30 days of pay for each of those Settlement Class  
13 Members who separated from their employment with Defendants using an average hourly rate,  
14 multiplied by 8 hours per day, multiplied by 30 days. (*Ibid.*) Defendants’ data shows that 176  
15 Settlement Class Members have separated from employment with Defendants. (*Ibid.*; *see also* Lab.  
16 Code § 203.)

17 **a. The Reasonable Settlement Value of the Waiting Time Penalties**  
18 **Claim**

19 In response, Defendants argue that Plaintiffs cannot prove the “willful” prong needed to obtain  
20 waiting time penalties, and that there is a good faith dispute that any unpaid wages are due. (*See* Labor  
21 Code § 203; 8 C.C.R. § 13520 [definition of “willful”]; Pyle Decl., ¶ 83.). Additionally, at least one  
22 court has found that failure to pay meal or rest period penalties cannot support a claim for waiting  
23 time penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444, 474, *as*  
24 *modified on denial of reh'g* (Oct. 10, 2019), *review granted*, 455 P.3d 704 (Jan. 2, 2020); *see also* *Ling*  
25 *v. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242, 1261 [“[Labor Code] section 226.7  
26 cannot support a section 203 penalty because section 203, subdivision (b) tethers the waiting time  
27 penalty to a separate action for wages.”].)

1 Under these circumstances, it is reasonable to discount Plaintiffs’ waiting time penalty claim  
2 by twenty-five percent (multiplying by .75) to account for the risk of Defendants prevailing to account  
3 for the risks involved in certifying a class and maintaining certification through trial, and by an  
4 additional forty percent (multiplying by .60) to account for the risks that Defendants will prevail on  
5 their defenses, and an additional seventy-five percent (multiplying by .25) to account for Defendants’  
6 assertion that they are in dire financial circumstances due to three other previous settlements and the  
7 recent loss of a major account. (Pyle Decl., ¶ 84.)

8 Accordingly, Plaintiffs determined that the reasonable settlement value of this claim was  
9 \$94,765.43. (Pyle Decl., ¶ 84.)

10 **vi. The Wage Statement Claim**

11 Pursuant to Labor Code section 226, 226.2, and 226.3, Defendants would be liable to  
12 Settlement Class Members for penalties at \$50 for the initial and \$100 for each subsequent violation  
13 per employee per pay period, up to \$4,000 per employee. (Pyle Decl., ¶ 85.) Wage statement penalties  
14 are only available to Class Settlement Members who were employed within one year of the filing of  
15 the original complaint, which Plaintiffs’ expert valued at \$419,250.00 at the time of mediation. (*Ibid.*)

16 Plaintiffs allege that Defendants failed to provide Settlement Class Members with wage  
17 statements that set forth all hours worked, and therefore gross and net wages were also incorrect, in  
18 violation of Labor Code sections 226, 226.2, 226.3 and Wage Order 9. (Pyle Decl., ¶ 86.) The wage  
19 statement penalties were calculated using a 100% violation rate, by determining the amount of  
20 Settlement Class Members who worked for Defendants since May 26, 2019, and calculating penalties  
21 at \$50 for the initial and \$100 for each subsequent violation per pay period, up to \$4,000 per employee.  
22 (*Ibid.*)

23 **a. The Reasonable Settlement Value of the Wage Statement Claim**

24 Labor Code section 226 provides for penalties only if Plaintiffs prove that Defendants’  
25 violations were both knowing and intentional. (Pyle Decl., ¶ 87.) Here, Defendants contend that, to  
26 the extent that they failed to provide adequate wage statements, that failure was not a “knowing and  
27  
28

1 intentional failure” within the meaning of Labor Code section 226. (*Ibid.*) Rather, any errors in the  
2 wage statements were inadvertent, whether through human or computer error. (*Ibid.*)

3 Defendants also argue that Plaintiffs cannot show that any Settlement Class Members were  
4 injured by any deficiencies in the wage statements. *See* Labor Code 226(e). Should Defendants prevail  
5 on any of these arguments, the Settlement Class Members will not be able to recover penalties under  
6 section 226(e). (Pyle Decl., ¶ 88.) Moreover, Defendants introduced a new timekeeping system in June  
7 2020 that they contend remedied Plaintiffs’ wage statement claims. (*Ibid.*)

8 It is therefore reasonable to discount Plaintiffs’ wage statement claim by twenty-five percent  
9 (multiplying by .75) to account for the risk of Defendants prevailing to account for the risks involved  
10 in certifying a class and maintaining certification through trial, and by an additional forty percent  
11 (multiplying by .60) to account for the risks that Defendants will prevail on their defenses, and an  
12 additional seventy-five percent (multiplying by .25) to account for Defendants’ financial  
13 circumstances. (Pyle Decl., ¶ 89.)

14 Accordingly, Plaintiffs determined that the reasonable settlement value of this claim was  
15 \$47,165.63. (Pyle Decl., ¶ 89.)

16 **vii. The PAGA Penalties**

17 PAGA penalties are not subject to approval under Rule of Court 3.769. Instead, PAGA calls  
18 for the trial court to “review and approve” PAGA settlements. (*See* Labor Code § 2699(1).) Here, the  
19 Parties agreed to allocate \$50,000 to the PAGA penalties in this case in light of Defendants’ possible  
20 defenses, a previous PAGA settlement,<sup>6</sup> and the Court’s authority to reduce any award that is “unjust,  
21 arbitrary and oppressing, or confusing.” (Labor Code § 2699 (e)(2); *see, e.g. Fleming v. Covidien, Inc.*  
22 (C.D. Cal. Aug. 12, 2011) No. 5:10-cv-01487-RGK-OP (reducing PAGA penalty by more than 80  
23 percent to avoid injustice).)

24 Defendants recently settled *Lopez*, a PAGA-only action that released Settlement Class  
25 Members’ PAGA claims through June 26, 2020. (Pyle Decl., ¶ 91.) As a result, there are only 356  
26  
27

28 <sup>6</sup> PAGA penalties are only available to Settlement Class Members after June 26, 2020, due to the  
Lopez Settlement, which released Settlement Class Members’ PAGA penalties prior to that date.

1 active PAGA pay periods in this case. (*Ibid.*) Assuming that a violation occurred during each pay  
2 period at \$100 per pay period, the maximum exposure for the PAGA claim is \$36,500. (*Ibid.*)

3 **a. The Reasonable Settlement Value of the PAGA Penalties Claim.**

4 It is reasonable to discount that amount by forty percent (multiplying by .60) to account for the  
5 risks that Defendants will prevail on their defenses at trial. (Pyle Decl., ¶ 92.) The reasonable  
6 settlement value of Plaintiffs’ PAGA claim was therefore \$27,375.00. (*Ibid.*) Thus, the PAGA  
7 Settlement of \$50,000 exceeds the settlement value of the PAGA claim and is therefore reasonable.  
8 (*Ibid.*)

9 **b. The LWDA has been Notified of the PAGA Settlement**

10 The LWDA has been notified of the PAGA aspects of the Settlement. Plaintiffs will notify the  
11 Court if they receive any response from the LWDA regarding the Settlement. (Pyle Decl., ¶ 93.)

12 **viii. The Unfair Competition Claim**

13 Plaintiffs’ claim for violation of Business and Professions Code section 17200 (the “UCL”) is  
14 based on the same Labor Code violations described above. If the Court were to rule against Plaintiffs  
15 on the predicate claims, the UCL claims would also fall. In addition, the damages for Plaintiffs’ UCL  
16 claims are co-extensive with the damages for their other claims. (Pyle Decl., ¶ 94.)

17 **4. The Settlement is the Product of Non-Collusive, Arm’s-Length and Informed**  
18 **Negotiations**

19 California courts recognize that “a presumption of fairness exists where...[a] settlement is  
20 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal. App. 4th at 245.)

21 In this case, the Settlement was reached after months of arm’s-length negotiations between the  
22 Parties. (Pyle Decl., ¶ 33.) Prior to mediation, the Parties met and conferred and agreed to an informal  
23 discovery plan that would allow them to productively move forward with informal settlement  
24 discussions. (*Id.* at ¶ 32.) Based on this informal discovery, Plaintiffs provided the mediator and the  
25 Defendants with a detailed analysis of liability and damages. (*Ibid.*) Defendants expressed to Plaintiffs  
26 uncertainty as to whether all Settlement Class Members had viable unpaid wages and associated  
27 liquidated damages, meal and rest break, unreimbursed business expense, wage statement, and waiting  
28

1 time penalty claims. (*Ibid.*) After a full day mediation, the Parties engaged in good faith, arm’s-length  
2 settlement negotiations for several months until reaching a resolution by accepting a mediator’s  
3 proposal. (*Ibid.*)

4 In reaching the Settlement, counsel on both sides relied on their substantial litigation  
5 experience in similar employment class actions. (Pyle Decl., ¶ 34.) Information gleaned from  
6 investigation and informal discovery informed Plaintiffs’ counsel’s assessment of the strengths and  
7 weaknesses of the case and the benefits of the Settlement. (*Ibid.*) Thus, the Settlement is the product  
8 of informed and non-collusive arm’s-length bargaining, and is entitled to a presumption of fairness.  
9 (*Ibid.*)

#### 10 **5. The Experience and Views of Plaintiffs’ Counsel Favor Settlement Approval**

11 “The recommendations of plaintiffs’ counsel should be given a presumption of  
12 reasonableness.” (*In Re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1043  
13 [quotation marks and citation omitted].) “The court undoubtedly should give considerable weight to  
14 the competency and integrity of counsel...in assuring itself that a settlement agreement represents an  
15 arm’s-length transaction entered without self-dealing or other potential misconduct.” (*Kullar*, 168 Cal.  
16 App. 4th at 129.)

17 Plaintiffs and Plaintiffs’ counsel have vigorously prosecuted this case and will continue to do  
18 so. (Pyle Decl., ¶ 98.) Information gleaned from Plaintiffs’ counsel’s investigation and discovery  
19 informed Plaintiffs’ counsel’s assessment of the merits and risks of the case and the benefits of the  
20 Settlement. (*Ibid.*) Plaintiffs’ counsel conducted a thorough investigation into the facts of the  
21 Litigation. (*Ibid.*) Based on an independent investigation and evaluation, Plaintiffs’ counsel are of the  
22 opinion that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement  
23 Class Members in light of all known facts and circumstances, including the risk of significant delay,  
24 the risk that Defendants will prevail on their defenses, and potential appellate issues. (*Ibid.*)

25 In addition to being thoroughly familiar with this case, Plaintiffs’ counsel has expertise in  
26 handling wage and hour class actions such as this and, therefore, is well-qualified to represent the  
27  
28

1 Plaintiffs and the Settlement Class Members. (Pyle Decl., ¶¶ 5-19; 99; *see also* Bell Decl., ¶¶ 6-19.)  
2 Therefore, the recommendation of Plaintiffs’ counsel also weighs in favor of Settlement approval.

### 3 **6. The Proposed Release is Narrowly Tailored**

4 The release of claims in the Settlement is narrowly tailored. Paragraph 41 of the Settlement  
5 Agreement provides that Participating Class Members will release the following wage and hour claims  
6 against Defendants: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure  
7 to provide meal periods; (4) failure to permit rest breaks; (5) failure to pay all wages to piece-rate  
8 workers for rest breaks; (6) failure to furnish adequate wage statements; (7) failure to reimburse  
9 business expenses; (8) failure to pay all wages due upon separation of employment; and (9) unfair  
10 business practices; and (10) claims asserted under the Private Attorney General Act, based on the  
11 preceding claims. (Settlement, ¶¶ 20, 41-42.)

12 The release is limited to claims based on the facts and theories alleged in the Litigation during  
13 the Class Period. (Settlement, ¶ 41.) Should Participating Class Members have claims that are not  
14 based on the facts and theories allegations in the complaint, they will not be released by this  
15 Settlement. (*Ibid*; Pyle Decl., ¶ 48.)

### 16 **7. The Proposed Class Notice Satisfies the Rules of Court**

17 The form and content of class notice, and the method used to notify the class, are within the  
18 trial court’s discretion. (*See Wershba*, 91 Cal. App. 4th at 251.)

19 The Class Notice in this case satisfies the criteria under Rule of Court 3.769 and “fairly  
20 apprise(s) the class members of the terms of the proposed settlement and of the options open to  
21 dissenting class members.” The Class Notice informs Settlement Class Members about the Litigation,  
22 the terms of the Settlement, the scope of the release, the right to receive a payment, the right to opt-  
23 out of the Settlement, the right to object to the Settlement, how Net Settlement Payments and  
24 Individual PAGA Payments are calculated, how to challenge the data used to calculate the Net  
25 Settlement Payments and Individual PAGA Payments, the maximum attorneys’ fees and costs  
26 requested, the maximum service payment awards requested, and the date, time and location of the final  
27 approval hearing. (Settlement, ¶ 45, Exhibit A; *see also* Pyle Decl., ¶ 52.) The Class Notice is therefore  
28



1 crafted to ensure that Settlement Class Members are alerted to the terms of the settlement. (*Ibid.*; Pyle  
2 Decl., ¶ 55.)

3 The means of giving notice is reasonably calculated to reach a substantial percentage of the  
4 Class Members and meets the requirements of Rule of Court 3.766 (e). (*See Wershba*, 91 Cal. App.  
5 4th at 251 [“[The] standard is whether the notice has a ‘reasonable chance of reaching a substantial  
6 percentage of the class members.’”].)

7 For these reasons, the proposed Class Notice is reasonable and should be approved by the  
8 Court.

9 **V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS**

10 The proposed Settlement Class satisfies the criteria for certification of a settlement class under  
11 California law because: 1) the individuals in the Settlement Class are so numerous that joinder would  
12 be impractical; 2) common questions of law and fact predominate over individual questions such that  
13 class certification is the most efficient and desirable way to maintain this litigation; 3) Plaintiffs’  
14 claims are typical of the Settlement Class’ claims; and 4) Plaintiffs and their counsel will fairly and  
15 adequately represent the interests of the absent Settlement Class members. (Code Civ. Proc. § 382;  
16 *see also* Pyle Decl., ¶ 95.)

17 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE AND**  
18 **NUMEROUS**

19 A class is “ascertainable” where members “may be readily identified without unreason-able  
20 expense or time by reference to official [or business] records.” (*See Sevidal v. Target Corp.* (2010)  
21 189 Cal. App. 4th 905, 919 [alterations in original].) Here, the proposed Settlement Class is defined  
22 as: Current and former drivers and helpers who were employed by Defendants working out of  
23 Defendants’ Pomona warehouse from May 25, 2020 through December 4, 2020, or any of Defendants’  
24 other warehouses throughout California at any time between May 26, 2016 through December 4, 2020.  
25 (Settlement, ¶ 23; *see also* Pyle Decl., ¶ 96.)

26 Settlement Class Members can easily be identified from Defendants’ personnel and  
27 employment records. (Pyle Decl., ¶ 96.) Defendants represent that there are 313 Settlement Class  
28

1 Members, rendering it impracticable to bring all Settlement Class Members before the Court.  
2 (Settlement, ¶ 83; *see also* Pyle Decl., ¶ 96.)

3 **B. COMMON ISSUES OF LAW AND FACT PREDOMINATE FOR SETTLEMENT**  
4 **PURPOSES**

5 The focus on certification is on what types of questions, “common or individual,” are likely to  
6 arise in the action. (*See Sav-On Drug Store, Inc. v. Sup. Ct.* (2004) 34 Cal. 4th 319, 327.) Plaintiffs’  
7 claims are predicated on allegedly unlawful policies including Defendants’ compensation scheme, and  
8 meal and rest period practices. (Pyle Decl., ¶ 97.) These claims are commonly held to be proper for  
9 class certification. (*See, e.g., Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 275 F.R.D. 513, 521  
10 [“Because Plaintiffs allege that all putative class members’ overtime pay rate was governed by a  
11 common policy to not incorporate bonus payments and Defendant does not dispute that it had such a  
12 common policy, with regard to the Bonus/Overtime Claim, Plaintiffs have posed questions of law and  
13 fact that are common to the class”]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App.  
14 4th 701 [certifying meal and rest period claims].)

15 **C. THE CLAIMS OF THE PROPOSED CLASS REPRESENTATIVES ARE**  
16 **TYPICAL**

17 Typicality is satisfied where class representatives have claims that are typical of those of the  
18 class. (*B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal. App. 3d 1341, 1347.) Here, Plaintiffs,  
19 are seeking preliminary appointment as Class Representatives. Plaintiffs’ claims are typical of those  
20 held by the Settlement Class Members. (Pyle Decl., ¶ 98.) Plaintiffs were employed by Defendants as  
21 drivers and/or helpers during the Settlement Period and were subject to Defendants’ compensation  
22 plan and other relevant wage and hour policies, and were injured by the same challenged policies that  
23 injured the Settlement Class. (*Ibid.*)

24 **D. THE PROPOSED CLASS REPRESENTATIVES AND COUNSEL WILL**  
25 **ADEQUATELY REPRESENT THE CLASS**

26 The adequacy requirement examines conflicts of interest between named parties and the  
27 class(es) they seek to represent. (*Capital People First v. State Dept. of Developmental Svcs.* (2007)  
28 155 Cal. App. 4th 676, 697.) Plaintiffs and their counsel will adequately represent the Settlement Class  
as there are no conflicts between Plaintiffs and the Settlement Class they seek to represent, and

1 Plaintiffs possess claims that are in line with those of the class. Plaintiffs’ counsel also have extensive  
2 experience in wage and hour class action litigation. (Pyle Decl., ¶¶ 5-19, 100; Bell Decl., ¶¶ 6-19.)

3  
4 **VI. THE COURT SHOULD APPROVE THE CLASS NOTICE OF SETTLEMENT AND**  
5 **SET A FINAL APPROVAL HEARING**

6 In addition to requesting approval of the Settlement and provisional certification of the  
7 Settlement Class, the parties request that the Court approve the form, content, and distribution of the  
8 Class Notice, and set a date for a final approval hearing.

9  
10 **VII. CONCLUSION**

11 The arm’s-length settlement of this matter avoids significant litigation and financial risk and  
12 provides for a monetary distribution to all Settlement Class Members. (Pyle Decl., ¶ 34.) For these  
13 reasons, the parties respectfully request that the Court enter an order:

14 1) Preliminarily approving the proposed Joint Stipulation of Class Action Settlement (the  
15 “Settlement”);

16 2) Provisionally certifying, pursuant to Section 382 of the California Code of Civil  
17 Procedure, for settlement purposes only, the proposed Settlement Class defined as follows: Current  
18 and former drivers and helpers who were employed by Defendants working out of Defendants’  
19 Pomona warehouse from May 25, 2020 through December 4, 2020, or any of Defendants’ other  
20 warehouses throughout California at any time between May 26, 2016 through December 4, 2020;

21 3) Appointing Erik Contreras, Omar Dominguez, Ivan Landeros, Guillermo Mendez, and  
22 Alejandro Olivera as Class Representatives;

23 4) Appointing Hunter Pyle and Katherine Fiester of Hunter Pyle Law and Jessica  
24 Campbell, Samuel Wong, and Carolyn Bell of AEGIS Law Firm PC as Class Counsel;

25 5) Scheduling a final approval hearing to consider whether the Settlement should be  
26 finally approved and to award an amount for service payments to the Class Representatives, and  
27 attorneys’ fees and costs to Class Counsel;

28 6) Granting leave to file the proposed Second Amended Complaint;

7) Appointing Phoenix as the third-party Settlement Administrator; and

1           8)       Approving the proposed Class Notice, and ordering that it be disseminated to the  
2 proposed Settlement Class as provided in the Settlement.

3  
4 Dated: April 12, 2021

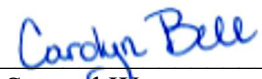
Respectfully submitted,  
HUNTER PYLE LAW

5  
6 By:  \_\_\_\_\_  
7 Hunter Pyle  
Katherine Fiester

8 *Attorneys for Erik Contreras, Omar Dominguez,*  
9 *Ivan Landeros, Guillermo Mendez, Alejandro Olivera*  
10 *and the Putative Class*

11 Dated: April 12, 2021

AEGIS LAW FIRM, PC

12  
13 By:  \_\_\_\_\_  
14 Samuel Wong  
15 Jessica Campbell  
Carolyn Bell

16 *Attorneys for Erik Contreras, Omar Dominguez,*  
17 *Ivan Landeros, Guillermo Mendez, Alejandro Olivera*  
18 *and the Putative Class*

19  
20  
21  
22  
23  
24  
25  
26  
27  
28