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Individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

Brian Thomas Ruff, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Wilson Logistics, Inc.; and Does 1 through 20, inclusive,

Defendants.

Case No. 22CV008614

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Declaration of Jonathan M. Lebe, Declaration of Brian Thomas Ruff; Declaration of Jodey Lawrence; and [Proposed] Order Filed Herewith]

Hearing Information:
Date: August 23, 2023
Time: 2:30 p.m.
Dept. 16
Reservation ID: 771046754154

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 23, 2023 at 2:30 P.M., in Department 15 of the above-titled court, located at 1221 Oak Street, Oakland, CA 94612, Plaintiff Brian Thomas Ruff ("Plaintiff"), on behalf of himself and the settlement class members described herein, will and hereby does move for an order: (1) preliminarily approving the proposed class action, Fair Labor Standards Act ("FLSA") collective action, and Private Attorney General Act ("PAGA") settlement pursuant to the Parties' Settlement Agreement, appointing Plaintiff as Class and Collective Representative for settlement purposes only; (2) appointing Lebe Law, APLC as Class Counsel for settlement purposes only; (3) preliminarily certifying the proposed class for settlement purposes only; (4) appointing Phoenix Class Action Administration Solutions as the third party settlement administrator; (5) approving the proposed form notice of the class and collective action settlement, which is attached to the Declaration of Jonathan M. Lebe ("Lebe Decl.") as Exhibit 1 of the Settlement Agreement; (6) approving the schedule for dissemination of notice to class members; and (7) scheduling a final fairness hearing.

This motion is based on this notice and motion, the attached memorandum of points and authorities, the declarations of Jonathan M. Lebe, Plaintiff, all documents on file in this action, and upon such oral argument as may be presented at the time of hearing.

Dated: August 1, 2023

LEBE LAW, APLC

By: _____

Jonathan M. Lebe
Zachary T. Gershman
Ryan C. Ely

Attorneys for Plaintiff Brian Thomas Ruff, individually and on behalf of all others similarly situated

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I. INTRODUCTION

Plaintiff Brian Thomas Ruff ("Plaintiff"), as representative of the putative settlement class and collective, requests preliminary approval of a class, Fair Labor Standards Act ("FLSA") collective, and Private Attorneys General Act ("PAGA") enforcement action settlement to resolve this matter in its entirety. Plaintiff's claims in this case arise from Defendant Wilson Logistics, Inc.'s ("Defendant"), alleged willful misclassification of Plaintiff and approximately 74 putative class members as independent contractors and Defendant's resultant failure to pay all minimum and overtime wages, failure to provide compliant meal and rest periods, failure to reimburse Plaintiff and other class members' business expenses, failure to provide accurate itemized wage statements, failure to timely pay all wages owed to separated/terminated employees, and for unlawfully deducting from Plaintiff and class members' wages. The parties have entered into a Settlement Agreement that, subject to the Court's approval, fully releases Defendant from all class, collective, and PAGA claims alleged in this action in exchange for a lump sum payment of **$1,250,000**.

The Settlement Agreement was reached through arms-length negotiations by informed counsel following extensive investigation of the asserted claims and relevant law, as well as the exchange of informal discovery. The settlement provides significant benefits to the members of the settlement class, and will be distributed to the class, Class Counsel for fees and costs, the settlement administrator for administration costs, the Labor Workforce and Development Agency ("LWDA"), and to Plaintiff as a small enhancement award for his service.

Once appropriate deductions have been made from the gross settlement amount, class members will recover a pro-rata share of the remaining settlement amount based on the number of workweeks each class member performed services under contract with Defendant, with an average recovery of approximately **$9,538** per class member. (Lebe Decl., ¶ 34.) Additionally, the LWDA will receive **$75,000** for PAGA penalties. Plaintiff respectfully requests that the Court preliminarily approve this settlement because it reflects a fair, adequate, and reasonable compromise of the disputed claims in this action.

To effectuate their settlement, the Parties respectfully request the Court to: (1) grant preliminary approval of the settlement in accordance with the Parties' Settlement Agreement; (2) certify the proposed settlement class and collective for settlement purposes only; (3) appoint Lebe Law, APLC, as Class Counsel for settlement purposes only; (4) appoint Plaintiff as class and collective representative for settlement purposes; (5) approve the proposed class, collective, and PAGA notice, which is attached as Exhibit 1 to the Settlement Agreement, both of which are attached to the Declaration of Jonathan M. Lebe ("Lebe Decl."); (6) appoint Phoenix Class Action Administration Solutions as the third party administrator for the settlement, and (7) to schedule a fairness hearing for final approval of the settlement.

II. FACTUAL BACKGROUND

A. Plaintiff's Claims Against Defendant

Defendant is a logistics company in the business of providing trucking and transportation services throughout California and the United States. (Lebe Decl., ¶ 14.) Specifically, Defendant provides trucking and long-haul services to its business customers to "drive [their] business forward." (*Id.*; *Customers*, Wilson Logistics, https://www.wilsonlogistics.com/customers [last visited June 6, 2022].) Defendant accomplishes this by leasing out a fleet of semi-trailer trucks and contracting with drivers who pick up, transport, and deliver Defendant's customers' goods. (Lebe Decl., ¶ 14.) Plaintiff performed over-the-road driving services for Defendant and was classified as an independent contractor from November 2020 until April 2021. (*Id*.)

Throughout his work with Defendant, Plaintiff alleges that Defendant willfully misclassified Plaintiff and class members as independent contractors. (*Id.* at ¶ 15.) As a result of Defendant's alleged willful misclassification, Plaintiff has claimed that Defendant failed to compensate Plaintiff and class members all minimum and overtime wages owed. (*Id.*) Moreover, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods, failed to pay all wages to class members who were terminated or separated from employment, and failed to provide accurate and itemized wage statements. (*Id.*) Plaintiff further alleges that Defendant failed to reimburse all reasonably necessary business expenses and unlawfully deducted from his and other class members' wages. (*Id.*)

In Plaintiff's operative First Amended Complaint, Plaintiff asserts claims for: Failure to Pay Federal Minimum Wages under the Fair Labor Standards Act ("FLSA") (29 U.S.C. § 206); Failure to Pay Federal Overtime Wages (29 U.S.C. § 207); Failure to Pay California Minimum Wages (Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1199, and the IWC Wage Order); Failure To Pay California Overtime Wages (Cal. Lab. Code §§ 510, 1194, 1198, and the IWC Wage Order); Failure To Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512, and the IWC Wage Order); Failure To Provide Rest Periods (Cal. Lab. Code § 226.7, and the IWC Wage Order); Failure to Pay Wages Upon Separation of Employment and Within the Required Time (Cal. Lab. Code § 201, 202, 203, and the IWC Wage Order); Failure To Furnish Accurate Itemized Wage Statements (Cal. Lab. Code § 226 and the IWC Wage Order); Failure To Reimburse All Business Expenses (Cal. Lab. Code § 2802 and the IWC Wage Order); Unlawful Deduction of Wages (Cal. Lab. Code § 221); Violation of Business and Professions Code §§ 17200, *et seq.*; and Enforcement of Labor Code § 2698, *et seq.*, ("PAGA"). (Lebe Decl., ¶ 16.)

B. Procedural History

On November 22, 2021, Plaintiff provided written notice to the LWDA, alleging violations by Defendant of California Labor Code §§ 201-04, 221, 225.5, 226, 226.3, 226.7, 246, 256, 510, 512, 558, 226.8, 1194, 1197, 1197.1, 2802, 2698, *et seq.*, 3700, and the applicable IWC Wage Order(s). (Lebe Decl., ¶ 17.) The LWDA did not inform Plaintiff that it intended to investigate the alleged violations within the requisite 65 days. (*Id.*)

On December 21, 2021, Plaintiff filed his initial class action complaint against Defendant in the Superior Court for Alameda County. Plaintiff's complaint asserted nine causes of action pursuant to the California Labor Code ("Labor Code") and Industrial Welfare Commission ("IWC") Wage Order for: (1) Defendant's failure to pay minimum wages; (2) Defendant's failure to pay overtime wages; (3) Defendant's failure to provide adequate meal periods; (4) Defendant's failure to provide rest breaks; (5) Defendant's failure to pay wages upon separation of employment and within the required time; (6) Defendant's failure to furnish accurate and itemized wage statements; (7) Defendant's failure to reimburse all business expenses; (8) Defendant's unlawful deduction of wages, and (9) for Defendant's violations of the California Business and Professions

Code. (*Id.* at ¶ 18.)

On February 17, 2022, Defendant removed the case to the United States District Court for the Northern District of California. (*Id.* at ¶ 19.) On February 24, 2022, Defendant filed an answer and affirmative defenses denying the claims asserted in Plaintiff's complaint. (*Id.* at ¶ 20.) Subsequently, on February 28, 2022, Defendant filed a motion to transfer the case to the Western District of Missouri in accordance with a forum selection clause contained in an agreement between Plaintiff and Defendant. (*Id.* at ¶ 21.)

On March 18, 2022, Plaintiff filed a representative action complaint against Defendant in this Court on behalf of other aggrieved employees of Defendant, seeking civil penalties under PAGA for Defendant's violation of Labor Code §§ 201-04, 210, 221, 226, 226.7, 226.8, 246, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2800, 2802, 3700, and the applicable IWC Wage Orders. (Lebe Decl., at ¶ 22.)

On January 3, 2023, the Parties mediated before the experienced employment mediator, Mark Rudy, Esq. (*Id.* at ¶ 23.) In advance of the mediation, the parties engaged in informal discovery, whereby Defendant provided time and payroll records related to putative class members and aggrieved employees for the class and PAGA periods, and policy documents related to the claims asserted by Plaintiff. (*Id.*) After a full-day mediation, the Parties did not settle; however, Mr. Rudy presented the Parties with a mediator's proposal. (*Id.*)

As part of the settlement agreement, the parties agreed to stay the class action matter of *Ruff v. Wilson Logistics Inc.*, currently before the Honorable William H. Orrick in the Northern District of California, Case No. 3:22-cv-00988-WHO, in order to process the class and collective claims before this Court, where Plaintiff's PAGA representative action claims were filed, with the intention of dismissing the federal action once the settlement reached by the parties is fully approved by this Court, or, if the settlement is not finally approved, to move forward with the Class Claims in that forum and the PAGA action claims in this Court.

C. The Settlement

1. Settlement Negotiations

At the mediation on January 3, 2023, the Parties exchanged legal analysis and data

pertaining to Plaintiff's class and PAGA claims. (Lebe Decl., ¶ 24.) Negotiations were rigorous and conducted at arms-length. (*Id*.) The Parties agreed that any settlement of the case would be on behalf of all drivers of Defendant who resided within the state of California and were classified as independent contractors. (*Id*.) Unable to reach a settlement during mediation, the Parties agreed to a mediator's proposal covering Plaintiff and class members' class and representative claims, as well as any potential FLSA claims of the proposed class. (*Id*.) Defendant denies any wrongdoing and believes that it has meritorious defenses to the class issue and on the merits but has concluded that further defense of this action would be lengthy and expensive for all parties. (*Id*.) Plaintiff and his counsel have considered the uncertainty and risk involved in further litigation, including the difficulties and potential delays in seeking class certification and Defendant's defenses. (*Id*.) Based upon these considerations, Plaintiff and Class Counsel have determined that the settlement is fair, adequate, and reasonable, and is in the best interests of the class. (*Id*.)

2. Settlement Terms

The settlement was reached on a class, collective, and PAGA basis. The California Settlement Class includes approximately 74 individuals and is defined as "All individuals who resided in California and signed an Independent Contractor Operating Agreement (ICOA) with Defendant and performed transportation services for Defendant under the ICOA during the Class Period." (Lebe Decl., ¶ 25.) The Class Period is defined as the period from June 26, 2017, to April 28, 2023. (*Id*.) The FLSA Settlement Collective is defined as "All individuals who resided in California and signed an Independent Contractor Operating Agreement (ICOA) with Defendant and performed transportation services for Defendant under the ICOA during the Class Period who opt-in to the FLSA portion of the Settlement." (*Id.*) The Collective Period is defined as the period from December 21, 2018, to April 28, 2023. (*Id.*)

In exchange for a release of claims, Defendant is providing substantial compensation to Plaintiff and the settlement class. Defendant has agreed to pay $1,250,000 to settle the class, collective, and PAGA claims. (*Id.* at ¶ 26.) The settlement includes the following: (1) Plaintiff's attorneys' fees up to $416,666.67; (2) Plaintiff's counsels' reasonable litigation costs necessary to prosecute and settle this litigation and administer the Agreement, estimated at no more than $22,500; (3) a $15,000

enhancement award to Plaintiff for his services; (4) settlement administration costs not to exceed $15,000; (5) and a payment of $75,000 to the LWDA, which represents 75% of the total PAGA settlement amount of $100,000. (*Id*.) Members of the FLSA Collective, all of whom are also class members, who submit a valid opt-in form will receive a $500 lumpsum payment in exchange for the release of their claims under the FLSA. (*Id.*) Any unclaimed funds of this pool will not revert to Defendant, but rather be added into the Net Settlement Fund and be paid out to class members *pro rata*. (*Id.*) After deduction of these amounts, the remaining net settlement amount of **$705,833.33**, which includes $25,000 reserved for the PAGA aggrieved employees, and the maximum of $37,000 to be distributed to opt-in FLSA collective members, will be distributed to class members and PAGA aggrieved employees based on the number of workweeks they provided services to Defendant. (*Id*.)

3. Notice to Class Members and Right to Opt Out or Object to Settlement

Following preliminary approval of the settlement, and in accordance with California Rules of Court, Rule 3.769(f), and section 216(b) of the FLSA, the Notice of Class and Collective Action Settlement together with an Opt-In Consent Form, will be mailed by first-class mail to each settlement class member at the last known address according to Defendant's records. (Lebe Decl., ¶ 27.) The proposed Notice of Class and Collective Action Settlement ("Class Notice") is attached as Exhibit 1 to the Settlement Agreement. (*Id*.) The Class Notice includes information on the claims asserted, the material settlement terms, the right to object, or to opt out and the timing and manner to do either. (*Id.*) Class members will have sixty (60) calendar days from the mailing of the notice to object or request exclusion from the settlement. The class notice will also inform the class of the date, place, and time of the final approval hearing. (*Id*.)

Before mailing the notice packets, the settlement administrator, Phoenix Settlement Administrators, Inc., will conduct a search of all class members' addresses using the National Change of Address database to update addresses. (Lebe Decl., ¶ 3128; Declaration of Jodey Lawrence ("Lawrence Decl."), ¶ 12.) Furthermore, the settlement administrator will undertake skip tracing to locate settlement class members whose Class Notices are returned as undeliverable. (Lebe Decl., ¶ 28; Lawrence Decl., ¶ 12.) Following final approval of the proposed settlement, the settlement administrator will also provide notice of final judgment on the settlement administrator's website for

the class members. (Lebe Decl., ¶ 328; Lawrence Decl., ¶ 14.)

III. LEGAL ARGUMENT

A. Standard for Preliminary Approval of Class Action Settlement

To prevent fraud, collusion, or unfairness to the class, settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-01, as modified (Sept. 30, 1996) (citations omitted); Cal. Rules of Court 3.769(c), 3.770(a).) The settlement of a PAGA claim likewise requires court approval. (*See* Labor Code § 2699(l). [stating, the "court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."].) When "the court grants preliminary approval, it must set a final approval hearing, and provide for notice . . . to the class." (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81, 93, review denied; *see* Cal. Rule of Court 3.769(e).) The preliminary approval stage "is not a fairness hearing." (*Armstrong v. Bd. of Sch. Directors of Defendants of Milwaukee* (7th Cir. 1980) 616 F.2d 305, 314 (overruled on other grounds by *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873). At the preliminary approval stage, the court "limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." (*In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, (internal citations omitted*); 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145.) The Court must be mindful that "[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." (*In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) 2011 U.S. Dist. LEXIS 103222, at *24.)

A class action settlement is presumed to be fair where: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 [citing Dunk, 48 Cal. App. 4th at 1802]; *In re Microsoft I-V Cases*, 135 Cal. App. 4th at 723; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146.) Where there is no extrinsic evidence of fraud or collusion, the court should assume that negotiations were conducted in good faith. (Newberg on Class Actions § 11.51 (3d ed. 1992); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 748, (denying objector's request

for discovery where there was no evidence of collusion between the parties during negotiations); *In re Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1122-23 [*citing Cho*, 177 Cal. App. 4th at 748].)

Here, when measured against the above standards, the settlement satisfies the requirements for preliminary approval, because it is well within the range of possible approval, reached after extensive litigation in which both parties have thoroughly evaluated the claims, and there are no grounds to doubt its fairness.

B. The Proposed Settlement Satisfies the Standards for Preliminary Approval

In *Kullar v Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, the California Appellate Court held that a presumption of fairness exists when: (1) the settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. The Court also confirmed that the trial court should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. (*Id*. at 129.) Here, all four *Kullar* elements are met.

1. The Settlement is the Result of Arms-Length Bargaining

The parties engaged in settlement negotiations at the mediation after months of analysis and formal and informal discovery. (Lebe Decl., ¶¶ 23 24, 29-31.) During mediation, each side provided the other with several detailed settlement proposals. (*Id*. at ¶¶ 23, 29.) The negotiations were rigorous and conducted at arm's length. (*Id*. at ¶¶ 23, 29.) The settlement cannot be described as fraudulent or collusive. (*Id*. at ¶ 29.) Rather, the settlement is the product of informed and rigorous negotiations by experienced counsel. (*Id*.) The settlement is fair, adequate, and reasonable for Plaintiff, the class, and the collective. (*Id*.)

2. There Has Been Sufficient Investigation and Discovery to Allow Plaintiffs and the Court to Act Intelligently and Evaluate the Settlement

Prior to reaching agreement to settle the class claims, the parties engaged in substantial formal and informal discovery. (*Id.* at ¶ 30.) Indeed, before mediation, Plaintiff formally served Defendant

with ten requests for production and one set of interrogatories. (*Id.*) In response, Defendant produced over 300 pages of records and policy documents and provided information regarding the overall class size. (*Id.*) Defendant similarly served Plaintiff with 62 requests for production and two requests for admission, to which Plaintiff provided formal responses and produced all relevant documents in his possession. (*Id.*) In advance of settlement, the Parties also engaged in informal discovery, whereby Defendant provided time and payroll records as to the putative class members and aggrieved employees and relevant policy documents, handbooks, and other relevant documents. (*Id.*) Plaintiff's counsel also retained an expert to perform an extensive analysis of the wage and hour claims presented by this class action, including a detailed exposure analysis brought to the mediation, upon which settlement negotiations were based. (*Id.* ¶ 31) The investigation permitted Plaintiff's counsel and their expert to perform a rigorous damages analysis and estimate Defendant's total exposure presented by this case, which is detailed below. (*Id.*)

3. Plaintiff and His Counsel Support the Proposed Settlement and Counsel Are Experienced in Similar Litigation

Plaintiff and his counsel fully support the settlement. (Lebe Decl., ¶ 9; Declaration of Brian Thomas Ruff, ¶ 14.) Plaintiff's counsel has considerable experience prosecuting class wage and hour litigation, having been approved as Class Counsel and co-Class Counsel in numerous class actions. (Lebe Decl., ¶¶ 3-13.)

Moreover, Plaintiff's counsel are prepared to litigate Plaintiff's claims through trial and any resulting appellate proceeding. (Lebe Decl., ¶ 9.) However, because of the interest in avoiding the risks and expenses associated with this litigation, and the substantial benefits the settlement confers upon settlement class members and Plaintiff, Plaintiff's counsel have determined that the settlement is in the best interests of Plaintiff and the class. (*Id.*)

4. There is No Known Opposition to the Settlement

To date, Plaintiff is unaware of any opposition to the settlement and there are no pending cases filed against Defendant alleging the same claims as this present matter regarding the same group of

class members.[1] (Lebe Decl., ¶ 32.) Moreover, PAGA claims do not belong to all alleged aggrieved employees; they belong to the State and a particular individual who is deputized to litigate on behalf of the LWDA. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981.) Thus, the LWDA is the real party in interest in relation to the PAGA claims in this matter, and the LWDA alone may express its views on the adequacy of a settlement of PAGA claims. (*See Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal. 4th 348, 382 ["The government entity on whose behalf the plaintiff files suit is always the real party in interest in [a PAGA] suit."].). Plaintiff's counsel submitted the Settlement in this matter to the LWDA on July 24, 2023, and has not received any opposition to the settlement to date. (Lebe Decl., ¶ 33.) Plaintiff's counsel will update the Court if Plaintiff's counsel receives any response from the LWDA regarding the proposed settlement. (*Id.*) Further, to the extent there are objectors to the class action following the mailing of the Class Notice, California Class Members will have the opportunity to file objections to or opt-out of the class action settlement. (*Id.*) To the extent there are objectors to the FLSA collective action following the mailing of the Class Notice, FLSA Collective Members will have the opportunity to file objections to or not opt-in to the FLSA collective settlement. (*Id.*)

C. The Court Should Approve the Proposed Settlement Because it is Fair and Reasonable Given the Substantial Benefits to the Class Members and the Risks and Expense of Complex and Protracted Litigation

The settlement confers substantial benefits on settlement class members. Defendant has agreed to a lump sum payment of $1,250,000, which will be distributed as follows: $100,000 for the resolution of the PAGA action, approximately $37,000 for resolution of the FLSA collective action, and the remainder for resolution of the class action, less Plaintiff's counsel's fees and costs, settlement administration costs, payment to the LWDA, and a small enhancement to Plaintiff for his services. (Lebe Decl., ¶ 34.) Each member of the FLSA collective will receive $500 in exchange for the release

[1] There is a case pending in the United States District Court for the Western District of Missouri – *Moore v. Wilson Logistics, Inc.*, No. 21-03212-CV-S-BP – that alleges Defendant failed to pay minimum and overtime wages under the FLSA. However, the conditionally certified collective in that case covers drivers whom Defendant classifies as B, C, and D seat drivers, whereas the collective action members in this action consist solely of drivers Defendant labeled as A seat drivers. (Lebe Decl., ¶ 35.) As such, the *Moore* case does not risk overlapping with the settlement of Plaintiff and class members' FLSA claims here. (*Id.*)

of their FLSA claims against Defendant, with any of these funds reserved for the FLSA collective escheating back to the remaining net settlement amount and being distributed to all class members, rather than reverting to Defendant. (*Id.*) After the FLSA Collective settlement amounts have been allocated, and once appropriate deductions have been made from the gross settlement amount, class members will recover a pro-rata share of the remaining settlement amount based on the number of weeks each class member performed services under contract with Defendant. (*Id.*) This translates to an average recovery of approximately **$9,538** per class member. (*Id.*) Additionally, the LWDA will receive $75,000 for PAGA penalties. (*Id.*) Plaintiff respectfully requests that the Court preliminarily approve this settlement because it reflects a fair and reasonable compromise of the disputed claims in this action. (Lebe Decl., ¶ 9, 34.)

This concrete and substantial benefit compares favorably to the uncertainty associated with continued litigation over contested issues. (*See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 410-11.) *Kullar* requires information be presented to the Court, acting as a fiduciary for the absent class members "to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation." (*Kullar*, 168 Cal. App. 4th at 129.)

Munoz v. BCI Coca-Cola Bottling Company of Los Angeles clarified that a *Kullar* showing does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. 186 Cal. App. 4th at 410-11. Indeed, *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Id.* at 409.) The *Munoz* Court found the record before the trial court sufficient, having included the number of class members, payroll data, as well as variances in duties and rest and meal period experience, and the companion action alleging less than $5,000,000 in damages. This information constituted "an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*." (*Id.*)

Here, Plaintiff's counsel has extensively reviewed the class data and estimated damages based on the allegations and evidence in this case. (Lebe Decl., ¶ 35.)

California Class and Collective Exposure Analysis: The approximate breakdown for each claim is as follows: (1) Unpaid Off-The-Clock Work (*i.e.*, unpaid minimum and overtime wages, including under the FLSA, and unpaid meal and rest breaks) - $2,980,399.86; (2) Failure to Timely Pay Wages Due to Terminated/Separated Employees - $214,326.00; (3) Failure to Furnish Accurate and Itemized Wage Statements - $108,350.00; (4) Failure to Reimburse Reasonably Necessary Business Expenses - $199,328.15; and (6) Unlawful Deduction of Wages - $2,487,533.15. (*See* Lebe Decl., ¶¶ 39-43.) Therefore, Plaintiff estimated that Defendant's maximum potential exposure on class claims was **$5,881,587.16** if Plaintiff successfully certified each claim, overcame Defendant's arguments that the classes should not be certified, and prevailed on the merits at trial. (Lebe Decl., ¶ 35.)

While the amount of the class members' maximum potential damages – if proven – is substantial, the legitimate and serious risks outlined above compelled a considerable discount for settlement. (*Id.* at ¶ 44.) Indeed, the litigation of Plaintiff's meal and rest break class claims was subject to considerable risk since California's meal and rest break laws are preempted by the Federal Motor Carrier Administration's ("FMCSA") hours of service regulations. (*Id.*; *see* Order Re: California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption, 83 FR 67470; *see also Connell v. Heartland Express* (C.D. Cal. Feb. 6, 2020) 2020 U.S. Dist. LEXIS 29235, at *5-9 [concluding that the FMCSA order preempts California meal and rest break laws and applies retroactively].) Consequently, because Plaintiff's meal and rest break claims potentially held no value if Plaintiff sought to litigate them further, Plaintiff's counsel determined it would be more prudent to combine and settle these claims with Plaintiff's stronger claims and at a reduced rate. (Lebe Decl., ¶ 43.) Furthermore, Plaintiff's overtime claims, both under state law and the FLSA, were likely also preempted by the motor-carrier exemption, and consequently could have been valueless. Similarly, Plaintiff's minimum wage claims under the FLSA also faced considerable hurdles as under the FLSA, unlike under California state law, employers are able to average the wages earned by an employee throughout their employment in a workweek, and as long

as that amount is at a greater hourly rate than the federal minimum wage, which is only $7.25 an hour and based on Plaintiff's analysis considerably less on average than what class member's made, there cannot be a viable claim for unpaid minimum wages under the FLSA. *Maravilla v. Rosas Bros. Constr.* (N.D. Cal. 2019) 401 F. Supp. 3d 886, 896. Finally, the bulk of Plaintiff's claims for unlawful deductions was made up of truck leases for the trucks that Plaintiff and other class members leased from Defendant and subsequently had such leases deducted from their paychecks. However, such leasing expenses have been found by some California courts to be a proper deduction that companies may reasonably deduct from employees' wages. (*Estrada v. FedEx Ground Package Sys., Inc.* (2007) 154 Cal. App. 4th 1, 24-25 (in which the California Court of Appeal concluded that delivery drivers were not entitled to reimbursement for the costs incurred purchasing or leasing delivery trucks used in the course of their employment with defendant.) Finally, all of these separate claims were premised on Plaintiff and class members demonstrating that they were misclassified, because without such a showing they would not be able to recover anything.

Moreover, the general risks associated with proceeding to trial are meaningful. (*Id.*) Indeed, Defendant maintains that class members are properly classified as independent contractors, that none of its wage and hour policies are facially unlawful, that it appropriately paid class members at all times, and that it was compliant with all applicable wage-and-hour laws. Further, the issue of class certification had not yet been presented to the Court. If Defendant was successful at defeating a class certification motion, the California Class Members would recover ***nothing*** as a result of this litigation. Class certification would have been a major hurdle for Plaintiff and the California Class Members. (*See Munoz,* 186 Cal. App. 4th at 411 [finding that the uncertainty of class treatment was a significant question that supported the decision to settle].) Class certification briefing also would be lengthy and expensive, and both sides risked an unfavorable ruling. Based on the significant benefits to the class and equally significant potential risks to proceeding to trial, Plaintiff believes the settlement is in the best interests of the class. (Lebe Decl., ¶ 44.)

Thus, Plaintiff submits that the settlement is fair, reasonable, and provides a good result for the class. (*Id.*) Moreover, to the extent there is a material increase in the number of workweeks between the mediation and Final Approval, there is a Blow-Up Provision in the Settlement Agreement that

allows Plaintiff to reject the settlement. (*Id.*)

PAGA Exposure Analysis: Plaintiff calculated Defendant's maximum liability under the PAGA to be approximately **$2,444,750**. (Lebe Decl., ¶ 41.) Plaintiff reached this figure by multiplying the number of workweeks during the PAGA period in which an alleged violation occurred by the applicable civil penalty for subsequent violations for misclassification under Labor Code section 226.8; minimum and overtime wage violations under Labor Code sections 201-04, 210, 510, 1194, 1194.2, and 1197; meal and rest break violations under Labor Code sections 226.7 and 512; wage statement violations under Labor Code section 226; time recording violations under Labor Code sections 1174 and 1174.5; business expense violations under Labor Code section 2802; sick leave violations under Labor Code section 246; wage deduction violations under Labor Code section 221; and workers' compensation insurance violations under Labor Code section 3700. (*Id.*)

The relevant exposure related to PAGA penalties was reduced by Plaintiff's counsel for various reasons. (*Id.* at ¶ 42.) First, the Court has unfettered discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) For instance, it is within a trial court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the Labor Code occurred. (*See Carrington v. Starbucks* (2018) 30 Cal. App. 5th 504.) In theory, the Court could reduce the award by 99%. (*Id.*) Second, Plaintiff's PAGA claims, which all were rooted in Plaintiff's allegation that Defendant willfully misclassified its independent contractors, faced serious manageability concerns, and had the real possibility of being non-manageable without seventy-plus "mini trials" of each independent contractor to determine if they were properly classified as independent contractors, and thus Plaintiff's PAGA claims were at risk of being struck and losing all value. (*See Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal. App. 5th 746, 764 [finding that California courts can strike PAGA claims for manageability concerns]; *but see Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal. App. 5th 685, 711 [disagreeing with *Wesson* and creating a split of authority on the issue of PAGA manageability].) Thus, Plaintiff believes the $100,000 for distribution to the LWDA and PAGA Group Members for the settlement of the PAGA civil penalty claims is appropriate. (Lebe Decl., ¶ 42.) Based on the significant benefits to the class and equally

significant potential risks to proceeding to trial, Plaintiff believes the settlement is in the best interest of the class. (Lebe Decl., ¶ 44.)

Thus, this settlement of $1.25 million dollars represents a recovery of about 23% of the total $5,425,149.86 in class and PAGA damages, a great result for a class of only seventy-four individuals in which multiple claims faced significant hurdles.

D. The Court Should Certify the Proposed Settlement Class

California courts may certify a "settlement class" for settlement purposes only. (*See Dunk*, 48 Cal. App. 4th at 1807.) Where a court evaluates class certification in the context of settlement, the evaluation may differ from the litigation context. (*Luckey*, 228 Cal. App. 4th at 93.) For example, protecting absent class members "by blocking unwarranted or overbroad class definitions require[s] heightened scrutiny in the settlement-only class context" since the court will lack the opportunity to adjust the class based on information ascertained through litigation. (*Id*. at 94.) "The court is, in short, acting in a fiduciary capacity as guardian of the rights" of absent class members. (*Id*. at 103.)

Before granting class certification in the settlement context, the court must find that the proposed class satisfies the requirements of California Code of Civil Procedure § 382. (*See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269–270.) The parties must show the existence of "an ascertainable class and a well-defined community of interest among class members." (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) Here, both elements are present.

1. The Proposed Settlement Class is Ascertainable

"Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal. App. 4th 836, 849.) Here, the proposed class consists of all individuals who resided in California and signed an Independent Contractor Operating Agreement with Defendant and performed transportation services for Defendant under the ICOA from June 26, 2017, to April 28, 2023. This class definition provides "common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *(Aguirre v. Amscan Holdings*, Inc. (2015) 234 Cal. App. 4th 1290, 1300, reh'g denied,

review denied (June 17, 2015); *Bartold v. Glendale Fed. Bank* (2000) 81 Cal. App. 4th 816, 828, overturned due to legislative action on other grounds.)

The class includes approximately 74 individuals. (Lebe Decl., ¶ 45.) This number is sufficient to meet the numerosity requirement of section 382. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 934.) Class members can be easily identified, since Defendant maintains for each class member their last known address and social security number. (Lebe Decl., ¶ 45.)

2. The Proposed Settlement Class Comprises a Community of Interest

The proposed settlement class comprises a sufficient community of interest. (Lebe Decl., ¶ 46.) A community of interest exists where (i) legal or factual questions common to the class predominate over questions affecting individual class members; (ii) claims of the class representative are typical of the claims or defenses of the class; and (iii) the class representative can protect adequately and fairly the interests of the class. (*See Sav-on*, 34 Cal. 4th at 326; *Wershba*, 91 Cal. App. 4th at 238.)

Here, the proposed settlement class satisfies the above three factors. For settlement purposes, the groups of class members share questions of law or fact that are substantially similar. (*Wershba*, 91 Cal. App. 4th at 238. For example, Plaintiff alleges Defendant implemented a uniform policy of misclassifying its Plaintiff and class as independent contractors rather than employees. (Lebe Decl., ¶¶ 15, 46.) As a result of this misclassification, Plaintiff alleges that he and the class members were uniformly not paid minimum and overtime wages, not provided compliant meal and rest breaks or compensation thereof, and not reimbursed for necessary business expenses. (*Id.*) Moreover, Plaintiff alleges that Defendant's uniform policy of deducting truck lease payments, as well as other allegedly disallowed deductions, from its drivers' paychecks resulted in the unlawful deduction of Plaintiff and class members' wages. (*Id.* at ¶¶ 15-16, 46) Plaintiff further alleges that Defendants' failure to provide all compensation owed to the class members resulted in derivative claims for failure to provide accurate wage statements and failure to timely pay all wages to terminated and separated employees. (*Id.*) These alleged wage and hour violations were suffered on a class-wide basis because of Defendants' uniform policies and practices regarding its drivers. (*Id.* at ¶ 46.) For these reasons, Plaintiff's claims are typical of other class members, as he personally suffered the purported wage and hour violations alleged in this matter. (*Id.*)

Third, Plaintiff can adequately protect the interests of the settlement class. (*Id.* at ¶ 47; *see Wershba,* 91 Cal. App. 4th at 238.) This factor considers whether Plaintiff's attorneys are qualified to conduct the litigation and whether the Plaintiff's interests do not conflict with the interests of the class. (*McGhee v. Bank of Am*. (1976) 60 Cal. App. 3d 442, 450.) Here, Plaintiff's counsel has no conflicts of interest, have vigorously prosecuted this action on behalf of Plaintiff and the settlement class, and have significant experience litigating wage and hour class actions, including those involving similar claims. (Lebe Decl., ¶¶ 3-13, 47.) Further, no conflict exists between the named Plaintiff and the class. Plaintiff's claims are typical to those of other class members. Further, as described above, payment will be made to the class members based on their number of workweeks worked. (Lebe Decl., ¶ 27.) In short, the Court should certify the class for settlement purposes only.

E. The Court Should Certify the FLSA Settlement Collective

For settlement purposes, the Parties have stipulated to the conditional certification and release of FLSA claims. Judicial approval of an FLSA collective settlement is necessary to confirm the existence of contested litigation and a bona fide dispute between the parties so as to effectuate a valid and enforceable release of FLSA claims. (*See Lynn's Food Stores, Inc. v. United States* (11th Cir. 1982) 679 F.2d 1350 [requiring court approval of FLSA settlement].) Even where a plaintiff does not assert a particular claim in an action, a trial court may nonetheless "'approve release of that claim as a condition of settlement of [an] action [before it]'" provided the release is "tied to the *factual allegations* in the complaint." (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal. App. 5th 521, 538, 540 (quoting *Villacres v. ABM Indust. Inc.* (2010) 189 Cal. App. 4th 562, 586) [alterations and emphasis in original].) Moreover, "allowing employers to settle FLSA claims within the context of a state law wage and hour class action furthers the purpose of the [FLSA] opt-in requirement by preventing defendants from facing repetitious litigation for the same underlying conduct." (*Id.* at 541.)

Here, the FLSA claims arise from the same factual allegations as Plaintiff's class claims. Indeed, the FLSA claims are tied directly to Plaintiff's allegation that he and other Class Members were misclassified as independent contractors, which is also the primary basis for Plaintiff's state

wage and hour claims. Thus, the Court has authority to approve the release of the FLSA claims and, accordingly, should certify the FLSA collective per the Parties' agreement to allow the release and settlement of these claims.

F. The Court Should Approve the Proposed Class Notice

Rule of Court 3.769(f) requires notice of the final approval hearing to be provided to class members in the manner specified by the court. "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*See Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal. App. 4th 877, 883.) Notice should provide each class member sufficient information to decide whether to accept the benefit he would receive under the settlement, or to opt out and pursue his or her own claim. (*Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 56.)

The proposed Class Notice meets this standard; it reasonably informs all class members of the nature and status of the litigation and the important terms of the settlement. In particular, the Class Notice provides each class member with an estimate of the value of their share of the settlement, explains their right to object to the settlement at the fairness hearing, and informs class members of their right to opt out of the settlement. In short, the Class Notice provides settlement class members with ample information to allow an informed decision about their participation in the settlement.

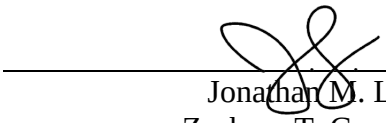
The proposed manner of notice and timetable for further proceedings are also reasonable. Under the proposed schedule, notice will be sent via first-class U.S. mail to all class members no later than twenty-eight (28) days after the Court preliminarily approves the settlement. Class members will then have sixty (60) days from the mailing date of notice to file a written request to be excluded from the settlement. This is sufficient time. (*See Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1375 [31 day period for written objections]; *Williams v. Costco Wholesale Corp.* (S.D. Cal. July 7, 2010), 2010 U.S. Dist. LEXIS 67731 at *4-5 [30-day opt-out period].) Following the end of this period, Plaintiff will file a motion for final approval of the settlement. The parties will take all needed actions to secure final approval of the settlement.

IV. CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed settlement and enter the proposed Order Granting Preliminary Approval, authorize mailing of the class notice, and set a date for a final approval hearing.

Dated: August 1, 2023

Lebe Law, APLC

By: 

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Attorneys for Plaintiff Brian Thomas Ruff, individually and on behalf of all others similarly situated

Superior Court of Alameda County Public

Make a Reservation

BRIAN THOMAS RUFF, INDIVIDUALLY AND ON BEHALF OF ALL AGGRIEVED EMPLOYEES

Case Number: 22CV008614 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2022-03-18 Location: Rene C. Davidson Courthouse - Department 16

Reservation

Case Name:
BRIAN THOMAS RUFF, INDIVIDUALLY AND ON BEHALF OF ALL AGGRIEVED EMPLOYEES vs WILSON LOGISTICS, INC.

Case Number:
22CV008614

Type:
Motion re: (Preliminary Approval of Class Action Settlement)

Status:
RESERVED

Filing Party:
Brian Thomas Ruff, individually and on behalf of all aggrieved employees (Plaintiff)

Location:
Rene C. Davidson Cou

Date/Time:
08/23/2023 2:30 PM

Number of Motions:
1

Reservation ID:
771046754154

Confirmation Code:
CR-9XCMQKQHEG7

Fees

Description
Motion re: (name extension)
Court Technology Fee
TOTAL

Payment

Amount:
$1.00

Type:
Visa

Account Number:
XXXX0493

Authorization:
07992G

Payment Date:
1969-12-31

Print Receipt | + Reserve Another Hearing | View My Reservations