

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: Vladimir J. Kozina (SBN: 284645) FIRM NAME: Mayall Hurley, P.C. STREET ADDRESS: 112 South Church Street CITY: Lodi STATE: CA ZIP CODE: 95240 TELEPHONE NO.: (209) 477-3833 FAX NO.: E-MAIL ADDRESS: vjkozina@mayallaw.com ATTORNEY FOR (name): Plaintiffs	FOR COURT USE ONLY on 2/6/2025 11:49 AM Reviewed By: M. Offhaus Case #23CV416653 Envelope: 18180864
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 N. First Street MAILING ADDRESS: 191 N. First Street CITY AND ZIP CODE: San Jose 95113 BRANCH NAME: Civil	CASE NUMBER: 23CV416653
PLAINTIFF/PETITIONER: Oscar Perez DEFENDANT/RESPONDENT: DGA Services, Inc., et al. OTHER:	JUDICIAL OFFICER: Judge Theodore C. Zayner
<p style="text-align: center;">PROPOSED ORDER (COVER SHEET)</p>	DEPT: 19

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Vladimir J. Kozina, on behalf of Plaintiffs

2. Title of the proposed order:
[Proposed] Order Granting Motion for Preliminary Approval of Class Action and PAGA Settlement

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Preliminary Approval
 - b. Date and time: February 5, 2025 at 1:30 p.m.
 - c. Place: Santa Clara County Superior Court, 191 N. First St., San Jose, CA 95113, Dept. 19

4. The proposed order was served on the other parties in the case.

Vladimir J. Kozina _____
 (TYPE OR PRINT NAME)

 _____
 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME: Perez v. DGA Services, Inc., et al.	CASE NUMBER: 23CV416653
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**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**
 - a. My residence or business address is (*specify*):
Mayall Hurley, P.C., 118 West Oak Street, Lodi, CA 95240
 - b. My electronic service address is (*specify*): jzeyen@mayallaw.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:
 - a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):
Chris C. Scheithauer, attorney for DGA Services, Inc.
 - b. To (*electronic service address of person served*): cscheithauer@calljensen.com
 - c. On (*date*): 2/6/25

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 6, 2025

Julie Zeyen

(TYPE OR PRINT NAME OF DECLARANT)



Julie Zeyen
(SIGNATURE OF DECLARANT)

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Filed
February 7, 2025
Clerk of the Court
Superior Court of CA
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23CV416653
By: mcastellon

8 **Attorneys for Plaintiffs Oscar Perez and Yuri Landaverde**

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SANTA CLARA**

12 **OSCAR PEREZ,**

13 **Plaintiff,**

14 **vs.**

15 **DGA SERVICES, INC. DBA JIT**
16 **TRANSPORTATION, a corporation, and**
17 **DOES 1-100, inclusive,**

18 **Defendants.**

Case No.: 23CV416653

**~~{PROPOSED}~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: February 5, 2025

Time: 1:30 pm

Dept: 19

19
20
21 This is a putative class and Private Attorneys General Act (“PAGA”) action. Plaintiffs Oscar
22 Perez and Yari Landaverde (collectively, “Plaintiffs”) allege that Defendant DGA Services, Inc. dba
23 JIT Transportation (“Defendant” or “JIT”) committed various wage and hour violations. Before the
24 Court is Plaintiffs’ motion for preliminary approval of class action and PAGA settlement, which is
25 unopposed. As discussed below, the Court GRANTS the motion.
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1 **I. BACKGROUND**

2 According to the allegations of the operative Second Amended Complaint (“SAC”), JIT offers
3 a variety of services to its customers including, but not limited to, shipment delivery, ecommerce
4 fulfillment (i.e., picking, packing, and shipping orders for various companies themselves or through
5 third parties), distribution and fulfillment (i.e., warehousing, storage and distribution services via their
6 own warehouses and those of third parties), and value added services (e.g., pick and pack, testing and
7 revision upgrades, vendor managed inventory, label production and application, enterprise resource
8 planning and system integration and returns management authorization). (SAC, ¶ 10.) Mr. Perez was
9 employed as a box driver, a nonexempt, hourly paid position, for JIT from approximately May 2019
10 through March 2023 and Mr. Landaverde was employed in the same role from November 2021
11 through September 2022. (Id., ¶ 11.)

12 Plaintiffs allege that JIT failed to: pay all wages owed (including minimum and overtime
13 wages); permit employees to take uninterrupted meal breaks or provide compensation in lieu of a
14 compliant meal break; provide the rest periods to which employees were entitled, or provide
15 compensation in lieu thereof; provide complete and accurate wage statements; timely pay wages owed;
16 and reimburse employees for necessary business expenses incurred by them. (SAC, ¶¶ 16-29.) Based
17 on the foregoing, Mr. Perez initiated this action in May 2023 and filed a first amended complaint in
18 July 2023. Plaintiffs filed the operative SAC on May 1, 2024, pursuant to a stipulation and order so as
19 to effectuate the terms associated with the parties’ settlement agreement and add Mr. Landaverde as a
20 plaintiff. The SAC asserts the following causes of action: (1) failure to pay minimum wage; (2) failure
21 to pay overtime; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to pay
22 all wages due and owing at end of employment; (6) failure to provide accurate, itemized wage
23 statements; (7) unlawful business practices; and (8) civil penalties under PAGA.

24 Plaintiffs now seek an order: preliminarily approving the parties’ class action and PAGA
25 settlement (the “Settlement Agreement”); ordering the proposed Class notice be sent to the settlement
26 Class; appointing Atticus Administration, LLC (“Atticus”) as the settlement administrator;
27 provisionally appointing Plaintiffs as Class representatives; appointing Mayall Hurley, P.C. as Class
28

1 counsel; preliminarily approving class representative service payments to Plaintiffs; and scheduling a
2 final approval hearing.

3 II. LEGAL STANDARDS FOR SETTLEMENT APPROVAL

4 A. Class Action

5 Generally, “questions whether a [class action] settlement was fair and reasonable, whether
6 notice to the class was adequate, whether certification of the class was proper, and whether the
7 attorney fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v.*
8 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–235 (*Wershba*), disapproved of on other
9 grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

10 In determining whether a class settlement is fair, adequate and reasonable, the trial court
11 should consider relevant factors, such as the strength of plaintiffs’ case, the risk,
12 expense, complexity and likely duration of further litigation, the risk of maintaining
13 class action status through trial, the amount offered in settlement, the extent of discovery
14 completed and the stage of the proceedings, the experience and views of counsel, the
15 presence of a governmental participant, and the reaction of the class members to the
16 proposed settlement.

17 (*Wershba, supra*, 91 Cal.App.4th at pp. 244–245, internal citations and quotations omitted.)

18 In general, the most important factor is the strength of the plaintiffs’ case on the merits,
19 balanced against the amount offered in settlement. (*See Kullar v. Foot Locker Retail, Inc.* (2008) 168
20 Cal.App.4th 116, 130 (*Kullar*.) But the trial court is free to engage in a balancing and weighing of
21 relevant factors, depending on the circumstances of each case. (*Wershba, supra*, 91 Cal.App.4th at p.
22 245.) The trial court must examine the “proposed settlement agreement to the extent necessary to
23 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
24 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
25 and adequate to all concerned.” (*Ibid.*, citation and internal quotation marks omitted.) The trial court
26 also must independently confirm that “the consideration being received for the release of the class
27 members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of
28 the particular litigation.” (*Kullar, supra*, 168 Cal.App.4th at p. 129.) Of course, before performing its
analysis the trial court must be “provided with basic information about the nature and magnitude of the

1 claims in question and the basis for concluding that the consideration being paid for the release of
2 those claims represents a reasonable compromise.” (Id. at pp. 130, 133.)

3 **B. PAGA**

4 Labor Code section 2699, subdivision (1)(2) provides that “[t]he superior court shall review and
5 approve any settlement of any civil action filed pursuant to” PAGA. The court’s review “ensur[es] that
6 any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531,
7 549.) Seventy-five percent of any penalties recovered under PAGA go to the Labor and Workforce
8 Development Agency (LWDA), leaving the remaining twenty-five percent for the aggrieved
9 employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, overruled
10 on other grounds by *Viking River Cruises, Inc. v. Moriana* (2022) ___ U.S. ___, 2022 U.S. LEXIS
11 2940.)

12 Similar to its review of class action settlements, the Court must “determine independently
13 whether a PAGA settlement is fair and reasonable,” to protect “the interests of the public and the
14 LWDA in the enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
15 76–77.) It must make this assessment “in view of PAGA’s purposes to remediate present labor law
16 violations, deter future ones, and to maximize enforcement of state labor laws.” (Id. at p. 77; see also
17 *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F. Supp. 3d 959, 971 [“when a PAGA
18 claim is settled, the relief provided for under the PAGA [should] be genuine and meaningful,
19 consistent with the underlying purpose of the statute to benefit the public”], quoting LWDA
20 guidance discussed in *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110
21 (*O’Connor*).

22 The settlement must be reasonable in light of the potential verdict value. (See *O’Connor*,
23 *supra*, 201 F.Supp.3d at p. 1135 [rejecting settlement of less than one percent of the potential verdict].)
24 But a permissible settlement may be substantially discounted, given that courts often exercise their
25 discretion to award PAGA penalties below the statutory maximum even where a claim succeeds at
26 trial. (See *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL
27 5907869, at *8–9.)

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1 **III. SETTLEMENT PROVISIONS**

2 The proposed settlement provides that this action has been settled on behalf of the following
3 class: all current and former Truck Drivers who worked for Defendant from May 25, 2019, through
4 the date of execution of this Agreement [(i.e., April 17, 2024)] who have not previously released their
5 claims against Defendant and/or accepted payments in exchange for release of their claims against
6 Defendant. (Declaration of Vladimir J. Kozina in Support of Motion for Preliminary Approval of
7 Class Action and PAGA Settlement (“Kozina Decl.”), Ex. 2 (Settlement Agreement), ¶¶ 1.5, 1.12.) The
8 settlement also provides that the action has been settled on behalf of the following aggrieved
9 employees: any Truck Drivers employed by Defendant in California who worked for Defendant during
10 the PAGA Period. (Settlement Agreement, ¶ 1.4.) The PAGA Period is defined as the period of time
11 from May 27, 2022, to the date of execution of the agreement (i.e., April 17, 2024). (Settlement
12 Agreement, ¶ 1.31.)

13 According to the terms of settlement, Defendant will pay a non-reversionary, gross settlement
14 amount of \$55,000. (Settlement Agreement, ¶¶ 1.22, 3.1.) The gross settlement amount includes
15 attorney fees of \$11,000 (20 percent of the gross settlement amount), litigation costs not to exceed
16 \$16,000, a service award in the total amount of \$3,000 (\$2,000 for Mr. Perez and \$1,000 for Mr.
17 Landaverde), settlement administration costs not to exceed \$5,500, and a PAGA allocation of \$1,000
18 (75 percent of which will be paid to the LWDA and 25 percent of which will be paid to Aggrieved
19 Employees). (Settlement Agreement, ¶¶ 1.3, 1.7, 1.15, 1.22, 1.24, 1.27, 1.28, 1.34, 3.2.)

20 The net settlement amount will be distributed to the class members on a pro rata basis based on
21 the number of workweeks worked during the Class Period. (Settlement Agreement, ¶¶ 1.23, 1.28, 3.2.)
22 Similarly, Aggrieved Employees will receive a pro rata share of the 25 percent portion of the PAGA
23 payment allocated to them based on the number of workweeks worked during the PAGA Period.
24 (Settlement Agreement, ¶¶ 1.24, 1.34, 3.2.) Previously, the Settlement Agreement provided that
25 checks remaining uncashed more than 180 days after mailing would be void and the funds from those
26 checks would be distributed to the California Controller’s Unclaimed Property Fund. However, as the
27 Court explained in its minute order issued on December 11, 2024, the parties’ proposal to send funds
28 from uncashed checks to the Controller of the State of California did not comply with Code of Civil

1 Procedure section 384, which mandates that unclaimed or abandoned class member funds be given to
2 nonprofit organizations or foundations to support projects that will benefit the class or similarly
3 situated persons, or that promote the law consistent with the objectives and purposes of the underlying
4 cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal
5 services to the indigent. Consequently, the Court directed the parties to identify a new *cy pres* in
6 compliance with Code of Civil Procedure section 384 prior to the continued hearing date on this
7 motion. They have since done so and agreed that the funds from checks remaining uncashed more than
8 180 days after mailing will be distributed to Child Advocates of Silicon Valley. (See Supplemental
9 Declaration of Vladimir J. Kozina in Support of Motion for Preliminary Approval, ¶¶ 4-5, Exhibit 1
10 [Amendment to Class Action and PAGA Settlement Agreement and Class Notice].) The Court finds
11 that this meets the requirements of Code of Civil Procedure section 384.

12 In exchange for the settlement, class members agree to release Defendant, and related persons
13 and entities, from “all claims that were alleged, or reasonably could have been alleged, based on the
14 Class Period facts stated in the Operative Complaint [].” (Settlement Agreement, ¶¶ 1.39, 1.41, 5.2.)
15 Aggrieved Employees agree to release Defendant, and related persons and entities, from all claims for
16 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
17 acts stated in the Operative Complaint, and PAGA Notices. (Settlement Agreement, ¶ 1.40, 1.41, 5.3.)
18 Plaintiffs also agree to a general release. (Settlement Agreement, ¶ 1.41, 5.1.) \

19 IV. FAIRNESS OF SETTLEMENT

20 Plaintiffs assert that the settlement is fair, reasonable, and adequate. Plaintiffs indicate that the
21 settlement resolves claims on behalf of 68 class members, who worked a total of 5,236 workweeks.
22 (Kozina Dec., ¶ 14.) Prior to mediation, the parties engaged in informal discovery. Plaintiffs’ counsel
23 reviewed time and payroll data for the class, written policies, a spreadsheet with origin and destination
24 points of deliveries made by truck drivers. (*Id.* at 7.) Plaintiffs had the payroll and time data analyzed
25 by a damages expert. (*Id.* at ¶ 9.) The parties participated in a full-day mediation with Nikki Tolt, Esq.
26 on March 21, 2024, and reached a settlement. (*Id.* at ¶ 9.) The net settlement amount is approximately
27 \$18,500 and the average estimated payment is \$272.06 for each class member. (*Id.* at ¶ 14.) Plaintiffs
28 estimate that Defendant s maximum potential exposure for the class claims covered by the settlement

1 agreement is \$1,240,099. (*Id.* at ¶¶ 17-25, 27-28.) Plaintiffs provide a detailed breakdown of this
2 amount by claim. (*Ibid.*) Plaintiffs also estimate that Defendant’s maximum potential exposure for the
3 PAGA claim is \$1,971,900. (*Id.* at ¶¶ 26-27.) However, Plaintiffs assert that the value of the claims
4 should be discounted because discovery revealed that on numerous occasions many of Defendant’s
5 truck drivers drove across state lines and/or picked up/delivered goods to or from major international
6 airports that had arrived from out of state. (*Id.* at ¶¶ 7, 30- 34.) Plaintiffs state that the realistic value of
7 the class claims is \$123,530 and the realistic value of the PAGA claim is \$65,730. (*Id.* at ¶¶ 30-34.)

8 The proposed settlement represents approximately 4 percent of the maximum potential value of
9 Plaintiff s claims. The proposed settlement amount falls outside the general range of percentage
10 recoveries that California courts have found to be reasonable. (See *Cavazos v. Salas Concrete, Inc.*
11 (E.D. Cal.) Feb. 18, 2022, No. 1:19-cv-00062-DAD-EPG) 2022 U.S. Dist. LEXIS 30201, at *41-42
12 [citing cases listing range of 5 to 25-35 percent of the maximum potential exposure].) However,
13 Plaintiffs adequately explain why they significantly discounted the value of the claims and the
14 settlement is approximately 43 percent of the realistic exposure in this case. Overall, the court finds
15 the settlement is fair. The settlement provides for some recovery for each class member and eliminates
16 the risk and expense of further litigation.

17 **V. INCENTIVE AWARD, FEES AND COSTS**

18 Plaintiffs request service awards in the total amount of \$3,000 (\$2,000 for Mr. Perez and
19 \$1,000 for Mr. Landaverde). The rationale for making enhancement or incentive awards to named
20 plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a
21 benefit on other members of the class. An incentive award is appropriate if it is necessary to induce an
22 individual to participate in the suit. Criteria courts may consider in determining whether to make an
23 incentive award include: 1) the risk to the class representative in commencing suit, both financial and
24 otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the
25 amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the
26 personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. These
27 incentive awards to class representatives must not be disproportionate to the amount of time and
28

1 energy expended in pursuit of the lawsuit. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th
2 1380, 1394- 1395, quotation marks, brackets, ellipses, and citations omitted.)

3 Plaintiffs submit declarations detailing their participation in the action. Specifically, Perez
4 declares that he spent approximately 25 hours in connection with this litigation, including discussing
5 the case with class counsel, reviewing and providing documents to class counsel, answering questions
6 from class counsel, and discussing the settlement with class counsel. (Declaration of Oscar Perez in
7 Support of Motion for Preliminary Approval of Class Action and PAGA Settlement, ¶ 7.) Landaverde
8 declares that he spent approximately 10 hours, discussing the case with class counsel, reviewing and
9 providing documents to class counsel, and discussing the settlement with class counsel. (Declaration
10 of Yuri Landaverde in Support of Motion for Preliminary Approval of Class Action and PAGA
11 Settlement, ¶ 7.)

12 Moreover, Plaintiffs undertook risk by putting their names on the case because it might impact
13 their future employment. (See *Covillo v. Specialty's Caf.* (N.D.Cal. 2014) 2014 U.S. Dist. LEXIS
14 29837, at *29 [incentive awards are particularly appropriate where a plaintiff undertakes a significant
15 reputational risk in bringing an action against an employer].) Consequently, the court approves the
16 service award in the total amount of \$3,000.

17 The court also has an independent right and responsibility to review the requested attorney fees
18 and only award so much as it determines reasonable. (See *Garabedian v. Los Angeles Cellular*
19 *Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs' counsel will seek attorney fees of
20 \$11,000 (20 percent of the gross settlement amount). Plaintiffs' counsel shall submit lodestar
21 information (including hourly rates and hours worked) prior to the final approval hearing in this matter
22 so the court can compare the lodestar information with the requested fees. Plaintiffs' counsel shall also
23 submit evidence of actual costs incurred.

24 VI. PROPOSED SETTLEMENT CLASS

25 Plaintiffs request that the following settlement class be provisionally certified: All current and
26 former Truck Drivers who worked for Defendant from May 25, 2019, through April 17, 2024, who
27 have not previously released their claims against Defendant and/or accepted payments in exchange for
28 release of their claims against Defendant.

1 **A. Legal Standard for Certifying a Class for Settlement Purposes**

2 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
3 approving or denying certification of a provisional settlement class after [a] preliminary settlement
4 hearing.” California Code of Civil Procedure Section 382 authorizes certification of a class “when the
5 question is one of a common or general interest, of many persons, or when the parties are numerous,
6 and it is impracticable to bring them all before the court”

7 Section 382 requires the plaintiff to demonstrate by a preponderance of the evidence: (1) an
8 ascertainable class and (2) a well-defined community of interest among the class members. (*Sav-On*
9 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332 (*Sav-On Drug Stores*)). “Other
10 relevant considerations include the probability that each class member will come forward ultimately to
11 prove his or her separate claim to a portion of the total recovery and whether the class approach would
12 actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
13 429, 435.) The plaintiff has the burden of establishing that class treatment will yield “substantial
14 benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior Court* (1976) 18
15 Cal.3d 381, 385.)

16 In the settlement context, “the court’s evaluation of the certification issues is somewhat
17 different from its consideration of certification issues when the class action has not yet settled.”
18 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.) As no trial is anticipated in the settlement-
19 only context, the case management issues inherent in the ascertainable class determination need not be
20 confronted, and the court’s review is more lenient in this respect. (*Id.* at pp. 93–94.) But considerations
21 designed to protect absentees by blocking unwarranted or overbroad class definitions require
22 heightened scrutiny in the settlement-only class context, since the court will lack the usual opportunity
23 to adjust the class as proceedings unfold. (*Id.* at p. 94.)

24 **B. Ascertainable Class**

25 A class is ascertainable “when it is defined in terms of objective characteristics and common
26 transactional facts that make the ultimate identification of class members possible when that
27 identification becomes necessary.” (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980 (*Noel*)). A
28 class definition satisfying these requirements

1 puts members of the class on notice that their rights may be adjudicated in the
2 proceeding, so they must decide whether to intervene, opt out, or do nothing and live
3 with the consequences. This kind of class definition also advances due process by
4 supplying a concrete basis for determining who will and will not be bound by (or
5 benefit from) any judgment.

6 (*Noel, supra*, 7 Cal.5th at p. 980, citation omitted.)

7 “As a rule, a representative plaintiff in a class action need not introduce evidence establishing
8 how notice of the action will be communicated to individual class members in order to show an
9 ascertainable class.” (*Noel, supra*, 7 Cal.5th at p. 984.) Still, it has long been held that “[c]lass
10 members are ‘ascertainable’ where they may be readily identified ... by reference to official records.”
11 (*Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932, disapproved of on another ground by
12 *Noel, supra*, 7 Cal.5th 955; see also *Cohen v. DIRECTV, Inc.* (2009) 178 Cal.App.4th 966, 975-976
13 [“The defined class of all HD Package subscribers is precise, with objective characteristics and
14 transactional parameters, and can be determined by DIRECTV’s own account records. No more is
15 needed.”].)

16 Here, the estimated 68 Class members are readily identifiable based on Defendant’s records,
17 and the settlement class is appropriately defined based on objective characteristics. The Court finds
18 that the settlement class is numerous, ascertainable, and appropriately defined.

19 **C. Community of Interest**

20 The “community-of-interest” requirement encompasses three factors: (1) predominant
21 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3)
22 class representatives who can adequately represent the class. (*Sav-On Drug Stores, supra*, 34 Cal.4th
23 at pp. 326, 332.)

24 For the first community of interest factor, “[i]n order to determine whether common questions
25 of fact predominate the trial court must examine the issues framed by the pleadings and the law
26 applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89
27 Cal.App.4th 908, 916 (*Hicks*)). The court must also examine evidence of any conflict of interest
28 among the proposed class members. (See *J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113
Cal.App.4th 195, 215.) The ultimate question is whether the issues which may be jointly tried, when
compared with those requiring separate adjudication, are so numerous or substantial that the

1 maintenance of a class action would be good for the judicial process and to the litigants. (*Lockheed*
2 *Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104–1105 (*Lockheed Martin*)). “As a general
3 rule if the defendant’s liability can be determined by facts common to all members of the class, a class
4 will be certified even if the members must individually prove their damages.” (*Hicks, supra*, 89
5 Cal.App.4th at p. 916.)

6 Here, common legal and factual issues predominate. Plaintiffs’ claims all arise from
7 Defendant’s wage and hour practices (and others) applied to the similarly-situated class members.

8 As for the second factor,

9 The typicality requirement is meant to ensure that the class representative is able to
10 adequately represent the class and focus on common issues. It is only when a defense
11 unique to the class representative will be a major focus of the litigation, or when the
12 class representative’s interests are antagonistic to or in conflict with the objectives of
13 those she purports to represent that denial of class certification is appropriate. But
14 even then, the court should determine if it would be feasible to divide the class into
15 subclasses to eliminate the conflict and allow the class action to be maintained.

16 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations, brackets,
17 and quotation marks omitted.)

18 Like other members of the class, Plaintiffs were employed by Defendant as nonexempt, hourly-
19 paid employees and allege that they experienced the violations at issue. The anticipated defenses are
20 not unique to Plaintiffs, and there is no indication that Plaintiffs’ interests are otherwise in conflict
21 with those of the class.

22 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is qualified to
23 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the
24 class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class representative does
25 not necessarily have to incur all of the damages suffered by each different class member in order to
26 provide adequate representation to the class. (*Wershba, supra*, 91 Cal.App.4th at p. 238.) “Differences
27 in individual class members’ proof of damages [are] not fatal to class certification. Only a conflict that
28 goes to the very subject matter of the litigation will defeat a party’s claim of representative status.”
(*Ibid.*, internal citations and quotation marks omitted.)

1 Plaintiffs have the same interest in maintaining this action as any class member would have.
2 Further, they have hired experienced counsel. Plaintiffs have sufficiently demonstrated adequacy of
3 representation.

4 **D. Substantial Benefits of Class Certification**

5 “[A] class action should not be certified unless substantial benefits accrue both to litigants and
6 the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120, internal quotation
7 marks omitted.) The question is whether a class action would be superior to individual lawsuits. (*Ibid.*)
8 “Thus, even if questions of law or fact predominate, the lack of superiority provides an alternative
9 ground to deny class certification.” (*Ibid.*) Generally, “a class action is proper where it provides small
10 claimants with a method of obtaining redress and when numerous parties suffer injury of insufficient
11 size to warrant individual action.” (*Id.* at pp. 120–121, internal quotation marks omitted.)

12 Here, there are an estimated 68 class members. It would be inefficient for the Court to hear and
13 decide the same issues separately and repeatedly for each class member. Further, it would be cost
14 prohibitive for each class member to file suit individually, as each member would have the potential
15 for little to no monetary recovery. It is clear that a class action provides substantial benefits to both the
16 litigants and the Court in this case.

17 **VII. NOTICE**

18 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule 3.769(f).)
19 “The notice must contain an explanation of the proposed settlement and procedures for class members
20 to follow in filing written objections to it and in arranging to appear at the settlement hearing and state
21 any objections to the proposed settlement.” (*Ibid.*) In determining the manner of the notice, the court
22 must consider: “(1) The interests of the class; (2) The type of relief requested; (3) The stake of the
23 individual class members; (4) The cost of notifying class members; (5) The resources of the parties;
24 (6) The possible prejudice to class members who do not receive notice; and (7) The res judicata effect
25 on class members.” (Cal. Rules of Court, rule 3.766(e).)

26 Here, the notice, which will be provided in English to Class members, describes the lawsuit,
27 explains the settlement, and instructs Class members that they may: do nothing, opt out of the
28

1 settlement (except for the PAGA component) or object.¹ The gross settlement amount and estimated
2 deductions are provided, and Class members are informed of their qualifying workweeks as reflected
3 in Defendant's records and are instructed how to dispute this information. Class members are given 45
4 days to dispute the amount of qualifying workweeks, request exclusion from the class or submit a
5 written objection to the settlement. The form of notice is adequate.

6 Turning to the notice procedure, as articulated above, the parties have selected Atticus as the
7 settlement administrator. No later than fifteen (15) days after preliminary approval, Defendant will
8 deliver the Class data (i.e., Class list and related qualifying workweeks and contact information) to
9 Atticus. Atticus, in turn, will mail the notice packet within fourteen (14) days after receiving the Class
10 data, subsequent to updating Class members' addresses using the National Change of Address
11 Database. Any returned notices will be re-mailed to any forwarding address provided or a better
12 address located through a skip trace or other search. Class members who receive a re-mailed notice
13 will have an additional 14 days to respond. These notice procedures are appropriate and are approved.


14 **VIII. CONCLUSION**

15 Plaintiffs' motion for preliminary approval is GRANTED.

16 The final approval hearing shall take place on August 6, 2025, at 1:30 in Dept. 19. The
17 following class is preliminarily certified for settlement purposes:

18 All current and former Truck Drivers who worked for Defendant from May 25, 2019,
19 through April 17, 2024, who have not previously released their claims against
20 Defendant and/or accepted payments in exchange for release of their claims against
21 Defendant.

21 Dated: February 6, 2025

22 
23 _____
24 Judge of the Superior Court

27 _____
28 ¹ Plaintiffs have made the changes to the notice requested by the Court in its December 11, 2024 minute order.