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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO**

BENITO SEGURA, on behalf of himself and all
other persons similarly situated,

Plaintiff,

vs.

ALTIA TRANSPORTATION COMPANY,
THOMAS GASPARINI, and DOES 1-10,
inclusive,

Defendants.

Case No. CGC-20-586926

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS/PAGA SETTLEMENT**

Date: December 2, 2021
Time: 11:00 a.m.
Department 304

Before the Honorable Anne-Christine Massullo

1 **PLEASE TAKE NOTICE** that on December 2, 2021 at 11:00 a.m. in Department 304 of
2 the San Francisco County Superior Court located at 400 McAllister St., San Francisco, CA 94104,
3 pursuant to California Rule of Court 3.7.69(c), the parties to the above-entitled action will move
4 for preliminary approval of a class action and PAGA settlement, and for an Order:

- 5 1. granting conditional class certification of the below-defined Class for settlement
6 purposes only pursuant to Code of Civil Procedure § 382;
- 7 2. preliminarily approving the Class Action Settlement Agreement (hereafter, the
8 “Settlement”);
- 9 3. appointing Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of Advocates
10 for Worker Rights LLP as Class Counsel;
- 11 4. appointing Plaintiff Benito Segura as Class Representative;
- 12 5. approving the use of the proposed notice procedure and approving Phoenix Class
13 Action Administration Solutions as the Settlement Administrator;
- 14 6. directing that notice be mailed to the Class; and
- 15 7. scheduling a hearing date for a final approval hearing.

16 The Class is defined as “Any non-exempt delivery drivers who work or have worked for
17 Defendants within the State of California during the period four (4) years prior to the filing of the
18 initial complaint in this action (September 16, 2016) through preliminary approval.”

19 This Motion is made on the following grounds: (1) the Class meets all the requirements
20 for class certification for settlement purposes only Code of Civil Procedure § 382; (2) Plaintiff
21 and his counsel are adequate to represent the Class; (3) the Settlement is a fair, adequate, and
22 reasonable compromise of the disputed wage and hour claims in this case; (4) the proposed notice
23 procedure fully comports with all due process requirements; and (5) in view of the foregoing, the
24 Settlement should be preliminarily approved, notice should be disseminated to Class Members, a
25 final approval hearing should be scheduled, and the [Proposed] Order Granting Preliminary
26 Approval of Class Action Settlement should be entered.

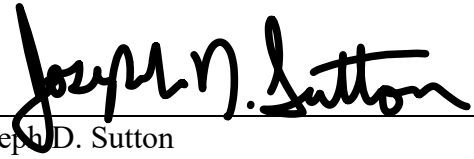
27 This Motion is based on this Notice of Motion and Motion, the following Memorandum of
28 Points and Authorities, the Declaration of Joseph D. Sutton in support thereof, all exhibits thereto,

1 all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and
2 on such oral and documentary evidence as may be presented in connection with the hearing on the
3 Motion.

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Dated: November 5, 2021

ADVOCATES FOR WORKER RIGHTS LLP



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Attorneys for Plaintiffs

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

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13 BENITO SEGURA, on behalf of himself and all
other persons similarly situated,

14 Plaintiff,

15 vs.

16
17 ALTIA TRANSPORTATION COMPANY,
THOMAS GASPARINI, and DOES 1-10,
18 inclusive,

19 Defendants.
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Case No. CGC-20-586926

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS/PAGA SETTLEMENT**

Date: December 2, 2021
Time: 11:00 a.m.
Department 304

Before the Honorable Anne-Christine Massullo

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1 **I. INTRODUCTION**

2 Plaintiff Benito Segura (“Plaintiff”) respectfully requests that this Court conditionally
3 certify the below-defined Class for settlement purposes only pursuant to Code of Civil Procedure
4 section 382; preliminarily approve the class action settlement; direct that notice be disseminated
5 to the Class; and schedule a final approval hearing. The Settlement provides for a non-
6 reversionary settlement fund of \$450,000.00 for approximately eighty-nine (89) Class Members
7 in compromise of highly disputed claims for unpaid wages and penalties.

8 This Court should grant this Motion because: (1) the Class meets the requirements for
9 conditional class certification for settlement purposes only under of Code of Civil Procedure
10 section 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
11 reasonableness, and adequacy; (3) Plaintiff is adequate to serve as Class Representatives; (4)
12 Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed class notice
13 procedures fully comports with due process and adequately apprises Class Members of their
14 rights; and (6) a final fairness hearing must be scheduled to allow Class Members an opportunity
15 to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed
16 below, Plaintiff respectfully requests that the Court grant this Motion in its entirety and
17 preliminarily approve the Settlement as presented herein.

18 **II. FACTUAL & PROCEDURAL BACKGROUND**

19 Plaintiff is former employee of Defendant Altia Transportation Company and Thomas
20 Gasparini (collectively “Defendants”). While employed by Defendants, Plaintiff worked as a non-
21 exempt delivery driver. This case alleges systematic wage theft as a result of willful piece rate
22 compensation policies that denied Class Members, also delivery drivers, separate compensation
23 for rest breaks, failed to pay all minimum and overtime wages owed, failure to reimburse for
24 legitimate business expenses, and failure to provide lawful meal and rest periods from four years
25 prior to the filing of Plaintiff’s original complaint until Defendants changed their practices and
26 policies following the filing of this lawsuit.

27 The alleged illegal practices revolve around the following:

- 28
- Failure to Separately Pay for Rest Periods;

- 1 • Failure to Pay Minimum Wages;
- 2 • Failure to Pay Lawful Overtime Wages;
- 3 • Failure to Provide Lawful Meal Periods or Premium Wages in Lieu Thereof;
- 4 • Failure to Provide Rest Periods or Premium Wages in Lieu Thereof;
- 5 • Failure to Reimburse;
- 6 • Failure to Provide Accurate Itemized Wage Statements; and
- 7 • Failing to time pay all wages owed to workers who resigned or were terminated.

8 Plaintiff complied with PAGA’s administrative exhaustion procedure by giving written
9 notice to the employer and the Labor and Workforce Development Agency (“LWDA”) of the
10 alleged Labor Code and Wage Order violations, and the facts and theories supporting those
11 violations. (Declaration of Joseph D. Sutton (“Sutton Decl.”) at ¶ 16.) The PAGA letter was sent
12 on or about December 3, 2020. (*Id.*) On September 16, 2020, Plaintiff filed his original complaint
13 seeking to recover wages and statutory and civil penalties on behalf of himself and a class of
14 similarly situated individuals against Defendants. (*Id.*) On June 29, 2019, 2019, Plaintiff filed his
15 First Amended Complaint adding class and PAGA allegations seeking to represent the following
16 class: “Any non-exempt delivery drivers who work or have worked for Defendants within the
17 State of California during the period four (4) years prior to the filing of the initial complaint in
18 this action (September 16, 2016) through preliminary approval.” (Settlement at § I.C.)

19 Shortly after Defendants filed their answer, the parties began discussing the potential for
20 early mediation. (Sutton Decl. at ¶ 17.) After getting bogged down in copious back and forth with
21 defense counsel over the scope of informal discovery required for early mediation, Plaintiff
22 served a full spate of written discovery upon Defendant, including Request for Production of
23 Documents, Special Interrogatories, and Form Interrogatories. (*Id.*) Shortly after Plaintiff
24 propounded his written discovery requests, the parties began a more fruitful discussion of the
25 informal discovery Plaintiff need to adequately prepare for mediation. (*Id.*) Ultimately, the parties
26 were able to agree on an extensive informal discovery exchange, which essentially contained all
27 of Defendants’ timekeeping and payroll documents and data that Plaintiff’s counsel needed to
28 adequately assess the full value of the class and PAGA case and prepare for meaningful

1 negotiation. (*Id.*)

2 On July 19, 2021, the parties spent a full day in mediation with experienced mediator and
3 former Associate Justice of the California Court of Appeals for the Fifth District Steven
4 Vartabedian. (Sutton Decl. at ¶ 19.) Although the parties were not able to resolve the action at the
5 mediation, Justice Vartabedian continued to work on the matter, and on August 4, 2021, Justice
6 Vartabedian made a mediator’s proposal for \$450,000 to settle the class and representative claims
7 that was subsequently accepted by both parties. (*Id.*) The settlement reached and presented to the
8 Court with this Motion is the product of informed, arms-length negotiation between the parties.
9 (*Id.*) The mediator, Justice Vartabedian, was thoroughly apprised of the arguments and facts of
10 this case by means of extensive briefing and factual presentations by both Plaintiff and
11 Defendants, and the material terms of the settlement at issue here were proposed by Justice
12 Vartabedian. (*Id.*) In reaching the settlement, counsel on both sides relied on their respective and
13 substantial litigation experiences in similar class and PAGA actions. (*Id.*)

14 **III. SUMMARY OF THE TERMS OF THE SETTLEMENT**

15 **A. Settlement Payments**

16 As detailed in the Settlement agreement, the Settlement provides for the payment of
17 claims by Defendant of \$450,000.00 (“Gross Settlement Amount”). (Ex. 1 to Sutton Decl.
18 “Settlement” at § III.A.). Pursuant to the Settlement, the parties agreed to the following allocation
19 of the Gross Settlement Amount to determine the Net Settlement Amount (“NSA”) for
20 distribution to the Class:

21	Gross Settlement Amount	\$4500,000.00
22	Proposed Attorneys’ Fees (33 & 1/3%)	\$150,00.00
23	Estimated Litigation Costs	\$10,000.00
24	Proposed Enhancement Award for the Named Plaintiff	\$15,000.00
25	PAGA Payment to the LWDA	\$7,500.00
26	Defendants’ Mediation Costs	\$2,000.00
27	Cost of Administration	\$5,950.00
28	Minimum Net Settlement Amount	\$261,550.00

1 The Individual Settlement Payments to each Class Member will be calculated as follows:
2 A Participating Class Member's Settlement Share shall be calculated by multiplying the Net
3 Settlement Amount by the ratio of (a) the number of pay periods worked by the Class Member for
4 Defendants between September 16, 2016 through the date of preliminary approval (the "Class
5 period"), and (b) the total number of pay periods worked by all Participating Class Members
6 during the Class period. (Settlement at § III.B.1.) Plaintiff's counsel has submitted the proposed
7 Settlement to the LWDA in accordance with Labor Code section 2699(1)(2). (Sutton Decl. at ¶ 22
8 fn. 1.)

9 **B. Process for Administering the Notice after Preliminary Approval**

10 Within 7 days after the Court enters its order granting Preliminary Approval of the
11 Settlement, Defendants will provide to the Settlement Administrator with Class Member Data,
12 preferably in electronic form for the Class Members containing, for each Class Member, the Class
13 Member's name, employee identification number, last known address, and Social Security
14 number, the end date for each Class Member's employment, and the number of pay periods
15 worked by the Class Member for Defendants during the Class Period. (Settlement at § III.F.2.a.)

16 Within 7 days after receiving the Class Members' Data, the Settlement Administrator will
17 mail the Class Notice Packets to all identified Class Members via first-class regular U.S. Mail
18 using the mailing address information provided by Defendants unless modified by any updated
19 address information that the Settlement Administrator obtains in the course of administration of
20 the Settlement. (*Id.* at § III.F.2.b.) A Class Member who wishes to dispute the number of
21 workweeks she or he worked outlined in the Class Member Dispute Form sent to the Class
22 Member as part of the Class Notice Packet, may do so by submitting the Class Member Dispute
23 Form, including any supporting documents (such as paycheck stubs) to the Settlement
24 Administrator by either email, FAX or mail postmarked no later than sixty (60) calendar days
25 after the Settlement Administrator mails the Class Member Dispute Form. (*Id.* at § III.F.3.b.) The
26 Settlement Administrator will make the final determination as to the correct number of
27 compensable workweeks for such a Class Member and will inform the Class Member regarding
28 the final determination of their total number of workweeks. (*Id.*) The parties will provide the

1 Court with a complete and accurate list of all Class Members who disputed their workweeks in
2 the final approval motion. (*Id.*) If a Class Notice Packet is returned because of an incorrect
3 address, the Settlement Administrator will promptly, and not later than 7 days from receipt of the
4 returned packet, search for a more current address for the Class Member using Accurint and other
5 reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class
6 Member. (Settlement at § III.F.2.c.)

7 In an attempt to maximize the recovery of the Class, the Settlement is a checks-mailed
8 settlement. (Settlement at § III.B.3.) In sum, this process entails the Settlement Administrator
9 mailing settlement checks to each Class Member who has not opted-out of the Settlement and for
10 whom the Claims Administrator has not received a returned Class Notice Packet and no current
11 address for the Class Member has been found through Accurint or other skip trace methods. As
12 such, the notice procedure established by the Settlement Agreement will efficiently and accurately
13 ensure that Notice is provided to the approximately eighty-nine (89) Class Members. (Sutton
14 Decl. at ¶ 26.)

15 A Class Member must cash his Settlement Share check within 180 calendar days after it is
16 mailed to him. (Settlement at § III.F.8.) If a check is returned to the Settlement Administrator, the
17 Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his
18 or his correct address. (*Id.*) However, if the Settlement Administrator is unable to locate the Class
19 Member's correct address or the class notice is returned as undeliverable to the Settlement
20 Administrator for a second time, then the Settlement Administrator will reallocate those funds on
21 a *pro rata* basis to Class Members for whom there are correct addresses. (*Id.*) If one or more
22 Class Members fail to cash their Settlement Share check within 180 days after it is mailed to their
23 last known address, and if the aggregate funds represented by the uncashed checks total \$5,000.00
24 or more, they will be distributed to each Class Member who is participating in the Settlement and
25 cashed their Settlement Share check in the same *pro rata* manner as the first settlement share
26 checks. (*Id.*) If the aggregate funds represented by the uncashed checks total less than \$5,000.00,
27 they will be donated to Centro Legal de la Raza, the designated *cy pres* recipient. (*Id.*) Should
28 there be a distribution to the *cy pres* recipient pursuant to the Settlement, Plaintiff's counsel will

1 submit a post-judgment report of the amount actually paid to the Class and an amendment of the
2 judgment to indicate the amount paid to the *cy pres* pursuant to CCP § 384.

3 **C. Process for Class Members to Opt-Out or Object to the Settlement**

4 A Class Member who submits a timely request for exclusion will not participate in or be
5 bound by the Settlement and the Judgment and will not receive a Settlement Share, but will
6 retain the right, if any, he or she may have to pursue a claim against Defendant. (Settlement at §
7 III.F.3.c.)

8 Any Class Member who so wishes may object to or comment on the Settlement; or elect
9 not to participate in the Settlement. (Settlement at § III.F.3.a.) The parties will provide the Court
10 with a complete and accurate list of all Class Members who object to the Settlement, along with
11 their objections in the final approval motion, and a list of all Class Members who requested
12 exclusion from the Settlement. (*Id.* at § III.F.3.) The Class Notice fully explains the
13 objection/comment and exclusion procedures. (See Class Notice attached to the executed
14 Settlement Agreement submitted herewith.)

15 **IV. LEGAL ARGUMENT**

16 **A. The Court Should Grant Preliminary Approval to This Class Action**
17 **Settlement**

18 A class action may not be dismissed, compromised, or settled without approval of the
19 Court. (*See* Civ. Code § 1781(f); Rule of Court 3.769; Fed. Rule Civ. Proc. 23(e).) Proper review
20 and approval of a class action settlement requires three steps: (1) preliminary approval of the
21 proposed settlement after submission of a written motion; (2) dissemination of mailed and or
22 published notice of the settlement to all class members; and (3) a formal fairness hearing, or final
23 settlement approval hearing, at which class members may be heard regarding the settlement, and
24 at which evidence and argument concerning the fairness, adequacy, and reasonableness of the
25 settlement is presented. (Rule of Court 3.769; *Manual for Complex Litigation* (4th ed. 2004), § 6
26 21.61.) This procedure serves Class Members' procedural due process rights and the court's role
27 as the guardian of Class Members' interests. (*See Newberg on Class Actions* (4th ed. 2002) §
28 11.22, *et seq.* ("Newberg").)

1 A settlement is presumptively fair where it is reached through arms' length bargaining,
2 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
3 counsel is experienced in similar litigation, and the percentage of objectors is small. (*Dunk v.*
4 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The decision to approve or reject a
5 proposed settlement is committed to the sound discretion of the court. (*See Kullar v. Foot*
6 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *Wershba v. Apple Computer, Inc.* (2001)
7 91 Cal.App.4th 224, 234-35.) A decision approving a class action settlement may be reversed
8 only upon a strong showing of clear abuse of discretion. (*See Kullar*, 168 Cal.App.4th at 128;
9 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).) In *Kullar*, the court laid out
10 several factors that should be analyzed in determining if a class action settlement should be
11 approved. These factors include: (1) the strength of plaintiffs' case; (2) the risk, expense,
12 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
13 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
14 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
15 governmental participant; and (8) the reaction of the class members to the proposed settlement.
16 (*See Kullar*, 168 Cal.App.4th at 128.)

17 The proposed settlement here satisfies each of the applicable *Kullar* factors. The
18 significant informal discovery exchanged between the parties prior to mediation with Justice
19 Steven Vartabedian (ret.) permitted Plaintiff and their counsel to fairly evaluate the strengths of
20 the case and the risks associated with ongoing litigation. (*Id.* at ¶¶ 36-39.) Further, Plaintiff's
21 counsel is experienced in the handling of wage and hour class actions and supports this
22 Settlement. (*Id.* at ¶¶ 3-6.)

23 1. The Strength of Plaintiff's Case

24 In order to prepare for mediation with Justice Steven Vartabedian (ret.), the parties
25 exchanged significant informal discovery, and Plaintiff's counsel thoroughly analyzed the
26 discovery produced in order to construct as reliable of a damage model as possible under the
27 circumstances. (Sutton Decl. at ¶¶ 17, 18.) The payroll, timekeeping, and electronic data
28 produced by Defendants were quite useful in modeling the class and PAGA damages for

1 purposes of mediation. (*Id.* at § 18.) For example, the failure to pay all minimum and overtime
2 wages claims were evident through cross-referencing the timekeeping and payroll data. (*Id.*)
3 Although class members were not paid hourly, there were electronic timekeeping records
4 detailing the start and end times of their shifts, and these data were also very helpful in assessing
5 the class damages. (*Id.*) Plaintiff's data analyst determined each class member's regular rate--as
6 dictated by the piece rate--for each class member on a pay period basis and was then able to
7 determine which workers suffered minimum and overtime wage violations by comparing these
8 with the payroll data. (*Id.*) Likewise, the electronic timekeeping data gave a good indication of
9 how many rest breaks each class member was entitled to for each workday, and this was
10 multiplied by each worker's regular rate for the week to determine the amount of separate
11 payments pursuant to Labor Code section 226.2. that Defendants failed to pay to Plaintiff and the
12 class. (*Id.*)

13 This strong evidence of failing to provide separate compensation for rest breaks, data
14 showing Defendants failed, at times, to pay Class Members minimum wage and failed to pay
15 overtime at the lawful rate, and Defendants' failure to record meal periods formed the backbone
16 of Plaintiff's damage assessment. (*Id.*)

17 2. The Risk, Expense, Complexity, and Likely Duration of Furthis Litigation

18 While Plaintiff and his counsel firmly believe that they would prevail on the core wage
19 claims (minimum wage, overtime, failure to separately pay rest breaks) given the class-evidence,
20 the meal and rest period claims faced significant challenges regarding individual issues
21 predominating that also make certification of the meal period claim far less than certain. (Sutton
22 Decl. at ¶ 36.) For example, even though Defendants failed to record meal periods during much of
23 the class period, individual issues present with determining whether or not workers were actually
24 provided with a 30-minute lunch notwithstanding defendants' failure to record meals. (*Id.*) The
25 rest period claim faced similar challenges as there was no evidence of a class-wide policy capable
26 of common proof of Defendants not authorizing or permitting rest periods, and the claims would
27 be subject to individual proof. In other words, the evidence in support of the failure to provide rest
28 periods would have to be largely testimonial, and given the potential variance inherent in

1 testimonial evidence, certifying the rest period claim is far from assured. (*Id.*) These evidentiary
2 challenges inherent in certifying and maintaining certification of claims where class-wide
3 evidence is lacking make trial a significant risk in this matter and also increase the likelihood of
4 appeals. (*Id.*)

5 Another uncertainty were the PAGA penalties alleged. (*Id.*) The PAGA penalties for the
6 underlying Labor Code violations amount to approximately \$900,000 of Plaintiff's roughly
7 \$2.1M damage estimate for mediation. While it is likely that a court would award some measure
8 of civil penalties pursuant to PAGA for the Labor Code violations that Plaintiff proved at trial,
9 trial courts have discretion to reduce the PAGA penalties awarded pursuant to Labor Code §
10 2699, *et seq.* and this was a substantial risk for Plaintiff. (*Id.*) For one, Defendants changed their
11 compensation practices that resulted in the alleged wage violations since Plaintiff filed the action,
12 which could weigh in favor of a reduced PAGA award. (*Id.*) Another factor that could weigh in
13 favor of reducing the alleged PAGA penalties is the fact that Altia Transportation is a relatively
14 new and small business that started delivery services in February 2018, and was found by a
15 relatively young individual. (*Id.*) Given the size of the business, the threat of bankruptcy, and the
16 fact that Altia does not have a longstanding history of labor abuses could all weigh in favor of a
17 reduced PAGA award should the case proceed to trial. (*Id.*) In sum, should this litigation proceed,
18 Plaintiff would face significant hurdles in his efforts to certify all of the claims alleged, prevail
19 and secure a judgment that does not pose substantial threat of bankruptcy to small and relatively
20 new business. Of course, there is also a risk that Defendants would prevail in its asserted
21 defenses.

22 3. The Risk of Maintaining Class Action Status Through Trial

23 In class actions, decertification is always a possibility. There is always a risk that a trial
24 of this nature can become unmanageable, especially since the rest and meal period claims would
25 have likely required representative testimony at trial. (Sutton Decl. at ¶ 36). Given cases like
26 *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 34 that deal with the complexity of using
27 statistical samples for litigating class claims, decertification is a real risk in any class action of
28 any size.

1 4. The Amount Offered in Settlement

2 On July 19, 2021, the parties spent a full day in mediation with experienced mediator and
3 former Associate Justice of the California Court of Appeals for the Fifth District Steven
4 Vartabedian. (Sutton Decl. at ¶ 36.) Although the parties were not able to resolve the action at
5 the mediation, Justice Vartabedian continued to work on the matter, and on August 4, 2021,
6 Justice Vartabedian made a mediator’s proposal for \$450,000 to settle the class and
7 representative claims that was subsequently accepted by both parties. (*Id.*) The settlement
8 reached and presented to the Court with this Motion is the product of informed, arms-length
9 negotiation between the parties. (*Id.*) The mediator, Justice Vartabedian, was thoroughly apprised
10 of the arguments and facts of this case by means of extensive briefing and factual presentations
11 by both Plaintiff and Defendants, and the material terms of the settlement at issue here were
12 proposed by Justice Vartabedian. (*Id.*) In reaching the settlement, counsel on both sides relied on
13 their respective and substantial litigation experiences in similar class and PAGA actions. (*Id.*)

14 For purposes of mediation, Plaintiff’s counsel calculated damages for the entire action to
15 be approximately \$2.1M. (Sutton Decl. at ¶ 33.) As noted throughout, the proposed \$450,000
16 settlement represents a compromise figure taking into account the strengths and weaknesses of
17 the claims asserted and the benefit to the Class Members for receiving compensation in the short
18 term without the potential for protracted litigation and/or appeals. (*Id.* at ¶¶ 35-38.) The proposed
19 \$450,000 settlement provides for a comparatively robust 21% of total damage model developed
20 for mediation purposes. However, the figure is still a compromise and accounts for the
21 weaknesses of some of the claims, such as the meal and rest period claims and the likelihood that
22 a court would discount any PAGA award. (*Id.* at ¶ 38.)

23 The participating Class Members will share in a Net Settlement at least \$261,550 after
24 deducting for attorneys’ fees, litigation costs, Defendants’ mediation costs, PAGA payment to
25 the LWDA, the class representative enhancement award, and settlement administration costs. (*Id.*
26 at ¶ 38.) The average payment to participate Class Members will be approximately \$2,888. (*Id.*)
27 These are substantial payments to Class Members, given the degree of risk on class certification,
28 liability, and damages, and certainty of delay involved in further litigation as explained herein.

1 (*Id.*) After taking into account the likelihood of success on each claim, Plaintiff’s counsel
2 determined that the settlement amount of \$450,000.00 was fair and reasonable. (*Id.*)

3 5. The Extent of Discovery Completed and Stage of the Proceedings

4 Although the parties have not exchanged evidence pursuant to formal discovery, there has
5 been a significant exchange of discovery through stipulation in preparation for the mediation
6 conducted on July 19, 2021. (Sutton Decl. at ¶ 17.A-D.) A review of these records/data requested
7 reveals that even though Plaintiff did not insist on Defendants’ responding to formal discovery,
8 the extent and breadth of the evidence sought and provided were sufficient to assess class
9 damages and the strengths and weakness of the class claims asserted. (*Id.* at ¶ 18.) In sum, while
10 this action was only filed in September 2020, the parties have exchanged a wealth of evidence in
11 order to effectively evaluate the strengths and weakness of the claims and defenses for purposes
12 of mediation, which weighs in favor of settlement.

13 6. The Experience and Views of Plaintiffs’ Counsel

14 The attorneys at Advocates for Worker Rights LLP (“Advocates”) have approximately
15 thirty-three (33) years of combined experience in litigating class and representative actions.
16 (Sutton Decl. at ¶¶ 3-6). A listing of the class and representative cases Advocates’ has litigated
17 since the founding of the firm in November 2018 is contained in the accompanying Declaration
18 of Joseph D. Sutton. (*Id.*) Well versed in class action litigation, Advocates has diligently and
19 aggressively pursued this action. (*Id.* at ¶¶ 16, 17.) After weighing the strengths and weakness of
20 both the claims and defenses asserted as detailed above, Plaintiff’s counsel firmly believes that
21 this is a fair and reasonable Settlement. (*Id.* at ¶¶ 35-38.)

22 7. The Proposed Plan of Allocation Is Fair and Reasonable

23 Distribution of class settlements are subject to the same standard of review as class action
24 settlements; they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil*
25 *Service Comm’n*, 688 F.2d 615, 624-25, 629-30 (9th Cir. 1982).) Here, the proposed plan of
26 distribution compensates Class Members based on a *pro rata* basis based each Class Member’s
27 number of work weeks worked during the period September 16, 2016 through the date of
28 preliminary approval (the “Class period”), and (b) the total number of pay periods worked by all

1 Participating Class Members during the Class period. (Settlement at § III.B.1.) This proposed
2 method of distribution serves the purpose of providing a simple, readily determinable, and fair
3 method for distribution, while also allowing for a distribution that corresponds closely to the
4 alleged damages and likely recoveries, which are based upon various theories of liability. (Sutton
5 Decl. at ¶ 24.) Further, this method will allow Class Members to review and confirm for
6 themselves the number of months of employment. (*Id.*) The formula employed in the Settlement
7 is commonly used in wage-and-hour cases, and is appropriate in this case, where the vast
8 majority of workers experience the same working conditions and have similar claims that
9 roughly correlate with the above formula. (*Id.*)

10 Sixty-six percent (66%) of each Settlement Share will be treated as a payment in
11 settlement of the Class Member’s claims for statutory and civil penalties. Thirty-four percent
12 (34%) of each Settlement Share will be treated as payment in settlement of the Class Member’s
13 claims for interest.(Settlement at § III.B.2.) The Sixty-six percent (66%) portion is the deemed
14 the “Non-Wage Portion” from which no deductions will be made. (Settlement at § III.B.2.a.) The
15 remaining thirty-four percent (34%) of each Settlement Share (the “Wage Portion”) will be
16 treated as a payment in settlement of the Participating Class Member’s claims for unpaid wages.
17 (*Id.*) Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and
18 deductions, and the Settlement Administrator will issue to the Class Member a Form W-2 with
19 respect to the Wage Portion. (*Id.*) The parties agreed to allocating sixty-six percent (66%) of
20 Class Members’ Settlement Shares as the Wage Portion because Plaintiff’s damage model,
21 constructed through the informal exchange of evidence Defendant provided a roughly analogous
22 breakdown between wages and statutory and civil penalties (70% of damages attributable to civil
23 and statutory penalties and 30% of damages attributable to wages). (Sutton Decl. at ¶ 27.)

24 8. The Proposed Notice Fairly Apprises the Class Members of the Terms of
25 the Settlement and the Class Members’ Rights Under the Settlement

26 Plaintiff requests that the Court approve the proposed plan and form of Class Notice.
27 (See attachment to Ex .1 to Sutton Decl.) The standard for determining the adequacy of notice is
28 whether the notice has “a reasonable chance of reaching a substantial percentage of the class

1 members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.)

2 Following preliminary approval of the Settlement by the Court, the Settlement
3 Administrator will mail a Class Notice Packet to each of the approximately eighty-nine (89)
4 Class Members detailing the terms of the Settlement and how a Class Member can request
5 exclusion from the Settlement or object to the terms of the Settlement. (Settlement at § III.F.3.)
6 Included in Class Notice Packet in section F will be an estimate of the Class Member’s
7 respective share of the Settlement based on the number of pay periods worked by that Class
8 Member reflected in Defendants’ records. Attached to the Class Notice, the Individual Class
9 Member Dispute Form will detail for each Class Member the number of work weeks worked
10 upon which their corresponding estimated share of the net settlement is based. (*Id.* at § III.F.3.b.)
11 A Class Member who wishes to dispute the number of workweeks worked outlined in the Class
12 Member Dispute Form may do so by notifying the Settlement Administrator in writing by mail
13 postmarked no later than 60-days after the dispute form has been mailed to them, or by FAX or
14 email on the same deadline. (*Id.* at § III.F.3.b.) The Settlement Administrator will make the final
15 determination as to the correct number of compensable workweeks for such a Class Member and
16 will inform the Class Member regarding the final determination of their total number of
17 workweeks. (*Id.*) The parties will provide the Court with a complete and accurate list of all Class
18 Members who disputed their workweeks, request exclusion, or object to the Settlement in the
19 final approval motion. ((*Id.* at § III.F.3.) If a Class Notice Packet is returned because of an
20 incorrect address, the Settlement Administrator will promptly, and not later than 7 days from
21 receipt of the returned packet, search for a more current address for the Class Member using
22 Accurant and other reasonable and cost-effective skip trace methods, and re-mail the Class
23 Notice Packet to the Class Member. (*Id.* at § III.F.2.c.).

24 With respect to the contents of the Notice, the “notice given to the class must fairly
25 apprise the class members of the terms of the proposed compromise and of the options open to
26 dissenting class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134,
27 151-52.) Here, the Notice clearly explains the proposed Settlement and the option to request
28 exclusion from the Settlement or contest it at the Final Approval Hearing. (Sutton Decl. ¶ 32.)

1 In short, the proposed Class Notice should be approved because it describes the proposed
2 Settlement with enough specificity to allow Class Members to make an informed choice
3 regarding whether to participate in the Settlement.

4 a) Phoenix Is Qualified to be Appointed as the Settlement
5 Administrator

6 After seeking bids from three experienced and known class action settlement
7 administrators, Plaintiff’s counsel has chosen to propose Phoenix Class Action Administration
8 Solutions (“Phoenix”) to administer the settlement. (Ex. 2 to Sutton Decl.) Phoenix provided a bid
9 not to exceed \$5,950 to administer this Settlement. (Sutton Decl. ¶ 41) Should the administration
10 cost be less than \$5,950, the difference will be distributed the Net Settlement Amount for
11 distribution to participating Class Members. (*Id.*)

12 **B. The Proposed Settlement Class Should Be Certified for Settlement Purposes**

13 Originally creatures of equity, class actions have been statutorily embraced by the
14 Legislature whenever “the question [in a case] is one of a common or general interest, of many
15 persons, or when the parties are numerous, and it is impracticable to bring them all before the
16 court...” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
17 1078.) They serve an important function by “establishing a technique whereby the claims of
18 many individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of
19 repetitious litigation and provid[ing] small claimants with a method of obtaining redress.”
20 (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of
21 class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug*
22 *Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

23 The certification question is “essentially a procedural one that does not ask whether an
24 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-
25 440.) A court ruling on a certification motion must determine “whether... the issues which may
26 be jointly tried, when compared with those requiring separate adjudication, are so numerous or
27 substantial that the maintenance of a class action would be advantageous to the judicial process
28 and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

1 The California Supreme Court has identified three certification requirements: (1) “the
2 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
3 interest”; and, (3) “substantial benefits from certification that render proceeding as a class
4 superior to the alternatives.” (*Fireside Bank v. Superior Court* (2007)40 Cal.4th 1069.) The
5 “community of interest” requirement includes three additional requirements: (1) common
6 questions of law or fact predominant over individual questions; (2) the class representatives have
7 claims or defenses typical of the class; and (3) the class representatives can adequately represent
8 the class. (*Id.*, citing *Fireside Bank, supra*, 40 Cal.4th 1069 at p. 1089.)

9 Class certification for settlement purposes is proper in this case as the proposed
10 settlement class satisfies each of the requirements under Code of Civil Procedure § 382.
11 Accordingly, this Court should certify the putative settlement class.¹

12 1. The Proposed Class is Ascertainable and Sufficiently Numerous

13 a) Ascertainability

14 Putative class members are deemed “ascertainable” when they may be “readily identified
15 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
16 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
17 scrutinizes the class definition, the size of the class and the means of identifying class members.
18 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

19 Here, the proposed settlement class is ascertainable as Defendant has agreed in the
20 Settlement Agreement to provide a class list to the settlement administrator containing the name,
21 employee identification number, last known address, Social Security numbers, the end date for
22 each Class Member’s employment, and the number of workweeks worked by the Class Member.
23 (Settlement, § III.F.2.)

24 b) Numerosity

25 Under federal case law, the “numerosity” requirement is generally met if the potential
26

27 _____
28 ¹ For settlement purposes only, Defendants do not oppose Plaintiff’s contentions regarding provisional certification of a class.

1 number of plaintiffs exceeds 40. (See *Stewart v. Abraham*, 275 F3d 220, 226-227 (3rd Cir.
2 2001). However, in California state court, there is no set number that is required as a matter of
3 law to maintain a class action. (See, e.g., *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p.
4 934.) For example, numerosity was met in a class representing the 10 beneficiaries of a trust in
5 an action for removal of the trustees. (*Bowles v. Sup.Ct. (Nickel)* 44 C2d 574, 587, (1955). Here,
6 the proposed Class contains approximately eighty-nine (89) Class Members. Therefore, Plaintiff
7 will be able to establish that the proposed Class is ascertainable and sufficiently numerous.

8 2. These Is a Well-Defined Community of Interests

9 a) There are Predominant Questions of Law and Fact

10 In deciding whether questions of common or general interest predominate, a court must
11 determine whether “the issues which may be jointly tried, when compared with those requiring
12 separate adjudication, are so numerous or substantial that the maintenance of a class action
13 would be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7
14 Cal.3d 232, 238; accord, *Sav-On Drug Stores*, *supra*, 34 Cal.4th at 326.) As a general matter, if
15 the defendant’s liability can be determined by facts common to all members of the class, a class
16 will be certified even if the members must individually prove their damages.” (*Hicks v. Kaufman*
17 *& Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; accord, *Knapp v. AT&T Wireless*
18 *Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

19 Here, there are questions of law and fact common to the proposed Class that predominate
20 over any questions affecting only individual Class Members. These common questions include:

- 21 1. Whether Defendants violated Labor Code section 226.2, 223, 510, 1194 and Wage
22 Order 9 by maintaining a piece rate pay system that failed to pay for all hours
23 worked, failed to pay separately for nonproductive time and rest periods, and failed
24 to properly compute overtime;
- 24 2. Whether Defendants violated Labor Code sections 510 and 1194 by paying fixed
25 salaries without regard to the amount of time worked and without computing
26 properly the regular rate of pay for overtime;
- 26 3. Whether Defendants violated Labor Code sections 226.7, 512 and Wage Order 9
27 by failing to provide proper meal periods or premium wages in lieu thereof;
- 27 4. Whether Defendants violated Labor Code sections 226.7 and Wage Order 9 by
28 failing to provide proper rest periods or premium wages in lieu thereof;

- 1 5. Whether Defendants violated Labor Code sections 226 and 226.2 by providing
2 wage statements that failed to state accurately the information required by those
3 provisions;
- 4 6. Whether Defendants violated Labor Code section 2802 by failing to reimburse for
5 necessary expenses;
- 6 7. Whether Defendants are liable for waiting time penalties for failing to pay all
7 wages owed timely upon separation from employment, pursuant to Labor Code
8 sections 201, 202 and 203;
- 9 8. Whether the burden of proof will shift to Defendants for failing to maintain
10 accurate records of the start and end of work periods, meal periods, rest periods
11 and total daily hours worked, and wages earned, in violation of Wage Order 9 and
12 Labor Code sections 226 and 1174;
- 13 9. Whether Defendants' conduct as described herein was willful; and
- 14 10. Whether Defendants engaged in unlawful and/or unfair business practices in
15 violation of Business & Professions Code sections 17200 et seq. ("UCL");

16 As the California Supreme Court has emphasized, "[c]laims alleging that a uniform policy
17 consistently applied to a group of employees is in violation of the wage and hour laws are of the
18 sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at p.
19 1033; *see also Bradley, supra*, 211 Cal.App.4th at 146.) Moreover, a class of similarly situated
20 employees may be certified based on common questions of fact or law, even if each employee
21 has to establish the amount of his or his damages. (See *Bell v. Farmers Ins. Exch.* (2004) 115
22 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 340.)

23 Because the Class Members worked in the same capacity for the same employer and were
24 subject to the same employment policies and practices, the questions of fact and claims regarding
25 the status of these employees are the same for each member of the class. Accordingly, for
26 purposes of settlement, the evidence reviewed by Plaintiff's counsel demonstrates that common
27 pay, meal, rest, and reimbursement policies applied to the proposed Settlement Class and
28 certification for settlement purposes is therefore appropriate.

b) The Proposed Class Representative Has Claims Typical of the
Proposed Class

A putative class representative's claim must be "typical," but not necessarily identical, to
the claims of other class members. The test of typicality "is whether other members have the

1 same or similar injury, whether the action is based on conduct, which is not unique to the named
2 plaintiffs, and whether other class members have been injured by the same course of conduct.”
3 (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the
4 representative is similarly situated so that he or she will have the motive to litigate on behalf of
5 all class members. (See, e.g., *Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not
6 necessary that the class representative have personally incurred all of the damages suffered by
7 each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
8 238.)

9 Here, the typicality requirement is met because “Plaintiffs and all other class members
10 claim the same injury, namely, [Defendants] alleged violation of California law regarding
11 reimbursement of work-related mileage expenses.” (*Starbuck*, 2008 WL 4196690, at *3.) “They
12 also seek the same relief, reimbursement for their work related mileage expenses from
13 [Defendants], [and] restitution.” (*Id.*) Plaintiff’s legal claims here are typical of those of the
14 Settlement Class as a whole because they arise under the same legal theories and the same
15 policies and practices. (See Declaration of Benito Segura filed herewith.)

16 c) The Proposed Class Representative and Plaintiff’s Counsel and
17 Have and Will Fairly Represent the Interests of the Class

18 A putative class representative must show that he can adequately represent the class.
19 (*Lockheed Martin Corp. v. Sup. Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
20 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the
21 interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

22 The named Plaintiff in this action has devoted significant time and effort to prosecuting
23 the claims alleged, including gathering, organizing, and reviewing documents with counsel,
24 assisting counsel with investigating the case, assisting counsel in preparing for and participating
25 actively in mediation to resolve the claims.²

26 _____
27 ² Plaintiff’s counsel will submit a supplement declaration from the proposed Class Representative at Final
28 Approval in support of his service award detailing his participation in the action, including specifics of
actions taken, time committed, and risks faced.

1 Plaintiff Benito Segura believes the Settlement is fair and reasonable and in the best
2 interest of the Class, and Defendants wish to resolve the case on a class-wide basis. (Sutton Decl.
3 at ¶ 40; Segura Decl. at ¶ 15.) Mr. Segura voluntarily signed the Settlement agreement. (Sutton
4 Decl. at ¶ 40.) Plaintiff is capable of fairly representing and adequately protecting the interests of
5 the proposed Class Members. (*Id.*) Plaintiff's interests in this litigation are coextensive with the
6 interests of the proposed Settlement Class. (*Id.*) The members of the proposed Settlement Class
7 all worked for Defendant during the relevant time period and incurred the same type of alleged
8 damages with regard to Defendant's alleged violations of the law. (*Id.*) Moreover, Plaintiff has
9 agreed to serve as a Class Representative and has specifically acknowledged the duties required
10 of class representatives in writing. (Sutton Decl. at ¶ 40; Segura Decl. at ¶ 13.) This demonstrates
11 Plaintiff's commitment to bringing about the best possible results for the benefit of the proposed
12 Classes. Therefore, Plaintiff has and will continue to adequately represent the proposed Class
13 Members. In addition, Plaintiff's counsel seeking to represent the Settlement Class is qualified to
14 do so. (Sutton Decl. at ¶¶ 3-6; See, e.g., *Lewis v. Starbucks Corp.*, 2008 WL 4196690, at *3
15 (E.D. Cal. Sept. 11, 2008) (where "Plaintiffs' counsel have been shown to have significant class
16 action experience," "adequacy of representation [may be] based on this fact alone").) The
17 adequacy of representation requirement is thus met for purposes of preliminary approval.

18 **C. A Class Action Is Superior to the Alternatives**

19 Class certification is authorized where common questions of law and fact predominate
20 over individual questions, and where class wide treatment of a dispute is superior to individual
21 litigation. (*See Sav-On*, 34 Cal. 4th at 326; *Richmond*, 29 Cal. 3d at 469.) The test is whether
22 proposed classes are sufficiently cohesive to warrant adjudication by representation. (*See*
23 *Hanlon*, 150 F.3d at 1022.) The Settlement Class in this case is sufficiently cohesive, since all
24 members share a "common nucleus of facts and potential legal remedies." (*See id.*) Plaintiff and
25 Class Members seek unpaid wages owed for work performed and statutory and civil penalties as
26 a result of Defendants' alleged unalleged policies and practices. The Settlement Class Members
27 share many, if not all, potential legal remedies in common. Thus, this Class may be certified for
28 settlement purposes.

1 Furthermore, particularly in the settlement context, class resolution is superior to other
2 available methods for the fair and efficient adjudication of the controversy. (*See Hanlon*, 150
3 F.3d at 1023; *Dunk*, 48 Cal. App. 4th at 1807 n.19; *Starbucks*, 2008 WL 4196690, at *4 ("as the
4 parties have already agreed on a settlement, 'the desirability of concentrating the litigation in one
5 forum is obvious.'") (citation omitted).) The superiority requirement involves a "comparative
6 evaluation of alternative mechanisms of dispute resolution." (*Hanlon*, 150 F.3d at 1023.) Here, as
7 in *Hanlon*, the alternative methods of resolution are individual claims for a relatively small
8 amount of damages. (*See id.*) These claims "would prove uneconomic for [a] potential Plaintiffs"
9 because "litigation costs would dwarf potential recovery." (*Id.*) The class action device can also
10 conserve judicial resources by avoiding the waste and delay of repetitive proceedings and
11 prevent inconsistent adjudications of similar issues and claims. (*See NASDAQ Mkt.-Markers*
12 *Antitrust Litig.*, 169 F.R.D. 493,529 (S.D.N.Y. 1996) (noting that the relevant inquiry is not
13 individual versus class cases, but other methods for the group-wide adjudication of a
14 controversy).) For this reason, in this case, as in *Hanlon*, a class action is the preferred method of
15 resolution.

16 Class certification in this case will provide substantial benefits to the litigants and the
17 Court. "[T]he alternative to a class action is potentially [89] individual cases seeking damages
18 unlikely to cover the costs of litigation, and thus no tangible alternative remedy exists."
19 (*Starbucks*, 2008 WL 4196690, at *4. A large number of repetitive individual cases would waste
20 judicial resources and could lead to inconsistent adjudications of similar monetary issues and
21 claims. Many class members with relatively small claims would likely decide not to bother
22 pursuing their claims at all. Aside from class treatment, a group-wide adjudication of unlawful
23 conduct is not available. Rather than having a multiplicity of proceedings, all involving the same
24 and evidence, a class action allows these matters to be resolved once on behalf of all claimants.
25 For all these reasons, the Settlement Class should be certified.

26 V. CONCLUSION

27 The arms-length settlement of this action avoids further litigation and makes a \$450,000
28 settlement fund available to eighty-nine (89) of Defendants' current and former workers. For all

1 the reasons set forth herein, Plaintiff and the putative Class respectfully request that the Court
2 conditionally certify the proposed Settlement Class, grant preliminary approval of the
3 Settlement, approve the proposed Class Notice and notice procedures, appoint the named
4 Plaintiff as Class Representatives, approve Advocates for Worker Rights LLP as Class Counsel,
5 and schedule a Final Approval hearing.

6

7 Dated: November 5, 2021

ADVOCATES FOR WORKER RIGHTS LLP

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Joseph D. Sutton
Attorneys for Plaintiffs

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8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
12

13 BENITO SEGURA, on behalf of himself and all
14 other persons similarly situated,

15 Plaintiff,

16 vs.

17 ALTIA TRANSPORTATION COMPANY,
18 THOMAS GASPARINI, and DOES 1-10,
inclusive,

19 Defendants.
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Case No. CGC-20-586926

**DECLARATION OF JOSEPH D. SUTTON
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS/PAGA SETTLEMENT**

Date: December 2, 2021
Time: 11:00 a.m.
Department 304

Before the Honorable Anne-Christine Massullo

1 1. I am an attorney at law licensed to practice before all courts of the State of
2 California and am a founding member of Advocates for Worker Rights LLP. My firm and I are
3 counsel for the Plaintiffs in the above-entitled case. I am familiar with the above-captioned
4 litigation and the dispute from which it arises. All statements made herein are on personal
5 knowledge unless otherwise stated. If called as a witness, I could competently testify as to matters
6 stated herein.

7 2. This declaration is in support of a proposed class and representative action
8 settlement in this wage-and-hour matter for approximately eighty-nine (89) workers.

9 **I. COUNSEL’S QUALIFICATIONS**

10 **A. Firm Description**

11 3. Advocates for Worker Rights LLP (“Advocates”) was founded in October 2018 by
12 attorneys Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco. The firm is dedicated to
13 representing low wage workers in wage theft and other wage-and-hour matters and operates with
14 the purpose of providing access to justice for workers traditionally deprived of legal services due
15 to barriers such as cost and language, as well as a lack of knowledge of their labor rights. The
16 founding members have over twenty-five combined years of class and representative action
17 experience in wage-and-hour cases. Prior to establishing Advocates, the member attorneys,
18 Palau, Sutton and Trabucco, practiced together at Mallison & Martinez, a law firm in Oakland,
19 California specializing in class and representative actions. Advocates was founded on a
20 commitment to the dignity of workers and has oriented its practice to focus on low-wage, under-
21 represented workers who have suffered wage theft and unlawful acts of discrimination,
22 harassment, and retaliation. Below is a list of the class and/or representative actions Advocates
23 have litigated and are currently litigating as lead counsel or co-counsel, since the firm’s founding:

- 24
25 a) Gonsales v. Acosta: (Northern District of California, Case No. 17-cv-
26 05767-VC). PAGA action on behalf of Plaintiff and grocery product
27 marketing specialists alleging misclassification and resultant wage-and-
28 hour violations. PAGA settlement approved for \$275,000.

- 1 b) Macias, et al. v. QLM, Inc., et al.: (Alameda County Superior Court, Case
2 No. RG19005507. Class and PAGA action on behalf of construction
3 workers alleging failure to pay pre/post off-the-clock time, to issue lawful
4 wage statements, to provide lawful meal and rest periods, and to pay all
5 wages owed timely. Class and PAGA settlement granted final approval for
6 \$1,150, 000.
- 7 c) Ramirez v. Terona Management Company LLC, et al.: (Santa Clara
8 County Superior Court, Case No. 19CV343622). PAGA and individual
9 action on behalf of maintenance workers alleging misclassified as
10 independent contractors and failure to pay for all hours worked, to provide
11 rest and meal periods, to provide accurate itemized wage statements, and to
12 pay all wages owed timely upon termination. Advocates is co-counsel on
13 this matter. PAGA settlement approved for \$325,000.
- 14 d) Mendoza v. Able Sheet Metal Inc.: (Alameda Superior Court, Case No.
15 RG19023873). PAGA and individual action on behalf of dozens of factory
16 workers alleging failure to pay for all hours worked, to provide rest and
17 meal periods, to pay all vacation wages, to provide accurate itemized wage
18 statements, and to pay all wages owed timely upon the termination. PAGA
19 settlement of \$287,500 approved by the Alameda County Superior Court.
- 20 e) Ramirez v. Heritage Hotel Group, Inc., et al.: (San Diego County Superior
21 Court, Case No. 37-2019-00052128-CU-OE-NC). Class and PAGA action
22 alleging FLSA violations, failure to pay for all hours worked, to pay
23 minimum and overtime wages, to provide lawful meal and rest periods, to
24 provide accurate wage statements, and to pay all wages owed at
25 termination. Class and PAGA settlement granted final approval for
26 \$275,000.
- 27 f) Gonzalez v. RJA Pollinating Company, et al.: (Imperial County Superior
28 Court, Case No. ECU001087). Class and representative action alleging
 failure to pay for all hours worked, to pay minimum and overtime wages, to
 provide lawful meal and rest periods, to provide accurate wage statements,
 and to pay all wages owed timely upon the termination of the employment

1 relationship. Class and PAGA settlement granted final approval for
2 \$600,000.

3 g) Hernandez v. Tucker Construction, Inc., et al.: (Santa Clara County
4 Superior Court, Case Nos. 19CV360241; 20CV364727). Class and
5 representative actions alleging failure to pay for all hours worked, to pay
6 minimum, overtime and prevailing wages, to provide lawful meal and rest
7 periods, to provide accurate wage statements, and to pay all wages owed
8 timely upon the termination of the employment relationship. Class and
9 PAGA settlement of \$325,000 pending court approval.

10 h) Chacon-Salguero v. D.H. Smith Company, Inc., et al.: (Santa Clara County
11 Superior Court, Case No. 20CV370863). Class and representative action
12 on behalf of construction workers alleging failure to pay for all hours
13 worked, to pay minimum and overtime wages, to provide lawful meal and
14 rest periods, to provide accurate wage statements, to reimburse all
15 necessary business expenses, and to pay all wages owed timely upon
16 termination. Class and PAGA settlement granted final approval for
17 \$2,000,000 granted.

18 i) Moreno v. Capital Building & Maintenance Cleaning Serv. Inc.: (Northern
19 District of California, Case No. 4:19-cv-07087-DMR). Class, FLSA opt-in
20 collective, and PAGA action on behalf of janitorial workers alleging failure
21 to pay lawful overtime wages, to issue accurate wage statements, and
22 timely pay all wages due upon termination. Advocates is co-counsel on this
23 matter. Class and PAGA settlement granted final approval for \$325,000.

24 **B. Attorneys on the Case**

25 4. I, Joseph D. Sutton, am a member of Advocates for Worker Rights LLP and am
26 admitted to practice before the California State Courts and the United States District Courts for
27 the Northern, Central and Eastern Districts of California. I am a graduate of the University of San
28 Francisco School of Law, where I was a member of USF's Traynor Appellate Advocacy and
ABA Labor and Employment Trial teams and a runner-up and finalist in USF's Advocate of the
Year competition. I earned a B.A. from Hanover College in Anthropology/Sociology and an

1 M.A. in Latin American Studies from the University of California, Berkeley. While at Berkeley I
2 was a Graduate Student Instructor for “Introduction to Latin American Studies” and “World
3 History” and the recipient of a Tinker Foundation grant to conduct fieldwork in Bahia, Brazil. I
4 began my legal career at Liberation Law Group, P.C. in San Francisco, where I represented
5 clients at all stages of litigation, including mediation and trial. From 2011 to 2018, I was an
6 associate attorney at the law offices of Mallison & Martinez, where I litigated dozens of wage-
7 and-hour class and representative actions and sexual harassment and discrimination cases. I have
8 eleven-years (11) experience practicing class and representative actions in the state of California.
9 I am an active member of California Employment and Labor Attorneys Association (“CELA”)
10 and the Alameda County Bar Association.

11 5. Marco A. Palau is a member of Advocates for Worker Rights LLP and is admitted
12 to practice law in New York and California. Mr. Palau earned his B.S. and M.B.A. from
13 California State University in 1997 and 1999 respectively. He earned his J.D. from Columbia
14 University in New York in 2005. While at Columbia Mr. Palau served as an Editor for the
15 Columbia Human Rights Law Review and Co-Managing Editor for the Jailhouse Lawyer’s
16 Manual (Spanish ed.). The Columbia Human Rights Law Review published Mr. Palau’s Note,
17 *The Struggle for Dignity, Land, and Autonomy: The Rights of Mexico’s Indigenous People a*
18 *Decade After the Zapatista Revolt*, Vol. 36 (2005). Mr. Palau began his career as a staff attorney
19 at California Rural Legal Assistance (“CRLA”) where he represented workers in wage-and-hour
20 disputes, tenants facing evictions from federally subsidized housing, and individuals trying to
21 secure or maintain social security benefits. Following his tenure at CRLA, Mr. Palau worked as
22 an associate attorney at the law firm of Mallison & Martinez where he litigated dozens of wage-
23 and-hour class and representative actions over the course of approximately ten years. Mr. Palau
24 has fifteen-years (15) experience practicing class and representative actions in the state of
25 California. Mr. Palau was named a “Rising Star” in Northern California by Super Lawyers
26 Magazine from 2011 to 2016. Mr. Palau an active member of the California Employment
27 Lawyers Association.

28 6. Mr. Trabucco is a member of Advocates for Worker Rights LLP and is admitted to

1 practice before the Northern and Eastern Districts of California and the California State Courts.
2 Mr. Trabucco earned his B.A. in Political Science and Spanish from the University of California,
3 Berkeley. Mr. Trabucco earned his J.D. from the University of California, Berkeley School of
4 Law (Boalt Hall). Mr. Trabucco began his legal career working with Miles Locker at Locker
5 Folberg, LLP, the former head of the legal department of the California Labor Commissioners’
6 office. Mr. Trabucco also served as a Bridge Fellow at the Legal Aid Society-Employment Law
7 Center in the Wage-and-Hour Enforcement Litigation Program. From 2014 to 2018, Mr.
8 Trabucco was an associate attorney at the law offices of Mallison & Martinez, where his practice
9 focused on employment litigation, including wage-and-hour class and representative actions, as
10 well as individual sexual harassment and discrimination matters. Mr. Trabucco has seven-years
11 (7) experience practicing class and representative actions in the state of California.

12 **II. PRIMARY ALLEGATION OF THE COMPLAINT**

13 7. This case alleges systematic wage theft as a result of willful policies that denied
14 non-exempt delivery drivers who worked for Altia Transportation Company and Thomas
15 Gasparini (“Defendants”) compensation. Central to Plaintiff’s class allegations is that Defendants
16 failed to compensate him and other class members for all hours worked due to their piece rate
17 compensation system until Defendant changed their policies on or about April 2020.

18 **A. Failure to Pay Plaintiff & the Class for All Hours Worked**

19 8. The Labor Code and Wage Orders require that employees are compensated for all
20 “hours worked.” The Wage Orders define hours worked as all “time during which an employee is
21 subject to the control of an employer and includes all the time the employee is suffered or
22 permitted to work, whether or not required to do so.” Labor Code section 1194 permits any
23 employee receiving less than the minimum wage to recover the balance of the wages owed in a
24 civil action, including interest thereon, plus reasonable attorneys’ fees and costs. In addition,
25 Labor Code section 1194.2 provides that a worker seeking unpaid minimum wages owed “shall
26 be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
27 interest thereon.” Plaintiff alleges that Defendant violated these provisions due to Defendant’s
28 piece rate compensation system that failed to make sure that the piece rate earned was at least the

1 minimum wage for all hours worked.

2 **B. Failure to Pay Lawful Overtime Wages**

3 9. California law requires overtime compensation at the rate of one and one-half (1.5)
4 times the regular rate of pay for hours in excess of eight (8) in a workday and 40 in a workweek.
5 (*See* Cal.Code Regs. title 8, § 11040.) Similarly, these overtime provisions require overtime pay
6 at the rate of twice the regular rate of pay for hours in excess of 12 in a workday and eight (8) on
7 any seventh day of a workweek (i.e., doubletime pay). (*Id.*) Plaintiff alleges that Defendants chose
8 not to calculate a worker’s regular rate of pay for purposes of determining what their overtime
9 rate should be. In other words, Plaintiff alleges that Defendants failed to tally up workers’ regular
10 rate based on their piece rate earnings when calculating the overtime wages owed to them. This,
11 Plaintiff alleges, results in class members being chronically underpaid for their overtime hours
12 worked.

13 **C. Failure to Provide Lawful Meal Periods or Premium Wages in Lieu Thereof**

14 10. California Labor Code section 512 and the Wage Orders prohibit employers from
15 employing workers for a work period of more than five hours per day without providing the
16 employee with a meal period of at least 30 minutes, or for a work period of more than 10 hours
17 without a second meal period of at least 30 minutes. The Labor Code and Wage Orders also
18 require that meal periods be provided within the first 5 hours of work. Any doubt as to the timing
19 of meal period was clarified by the California Supreme Court in *Brinker v. Sup. Ct.*, 53 Cal.4th
20 1004 (2012). Specifically, the *Brinker* Court held that Labor Code § 512(a) requires that “first
21 meal periods must start after no more than five hours.” *Id.* at 1042. Further, Justice Werdegar in
22 the *Brinker* decision noted that “[i]f an employer’s records show no meal period for a given shift
23 over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no
24 meal period was provided.” *Id.* at 1053; see also, *Safeway, Inc. v. Superior Court*, 238 Cal. App.
25 4th 1138, 1159–60, 190 Cal.Rptr.3d 131 (2015). *Brinker* and its progeny further defined the
26 contours of what constitutes lawful meal periods, including the record keeping requirement and
27 an employer’s duty to not impede or discourage the taking of breaks. Here, Plaintiff alleges that
28 since he and other class members were being paid by the stop (effectively a piece rate), they ate

1 quickly and on the go, and never clocked in or out for their meal periods. Further, Plaintiff alleges
2 that Defendants' payroll records also reflect a practice and policy whereby no meal period
3 premiums were paid for meal periods that were not recorded and/or provided.

4 **D. Failure to Provide Rest Periods or Premium Wages in Lieu Thereof**

5 11. "California law requires that piece rate work be separately compensated for rest
6 breaks at an amount not less than the minimum wage. (Labor Code § 226.2; *Gonzalez v. Downtown*
7 *LA Motors, LP*, 215 Cal. App. 4th 36, 44-45 (2013); *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th
8 864, 872 (2013). "[C]ompliance [with this requirement] cannot be determined by averaging
9 hourly compensation." *Bluford*, 216 Cal. App. 4th at 872. Rather, "employees [must] be
10 compensated at the minimum wage for each hour worked." *Gonzalez*, 215 Cal. App. 4th at 45
11 (citing *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 323 (2005)). Indeed, piece rate workers are
12 required to receive separate payment for their rest breaks at a rate that is no less than the higher of
13 the minimum wage or the average hourly rate determined by dividing the total compensation for
14 the week, by the total hours worked during the week. Labor Code section 226.2. Plaintiff alleges
15 that throughout the Class Period, Defendants failed to separately pay class members for their rest
16 breaks in compliance with section 226.2 because Defendants failed to calculate workers' average
17 hourly rate by dividing the total compensation for the week, by the total hours worked during the
18 week.

19 **E. Failure to Provide Accurate Itemized Wage Statements**

20 12. California Labor Code section 226(a) provides, in relevant part, that every
21 employer must furnish each employee with an itemized wage statement that accurately shows the
22 following:

- 23 (1) gross wages earned, (2) total hours worked by the employee, except as
24 provided in subdivision (j), (3) the number of piece-rate units earned and
25 any applicable piece rate if the employee is paid on a piece-rate basis, (4)
26 all deductions, provided that all deductions made on written orders of the
27 employee may be aggregated and shown as one item, (5) net wages earned,
28 (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a social
security number, (8) the name and address of the legal entity that is the

1 employer and, if the employer is a farm labor contractor, as defined in
2 subdivision (b) of Section 1682, the name and address of the legal entity
3 that secured the services of the employer, and (9) all applicable hourly
4 rates in effect during the pay period and the corresponding number of
5 hours worked at each hourly rate by the employee....

6 13. Plaintiff alleges that Defendants failed to issue accurate itemized wage statements
7 because the wage statements failed to list the piece rate, number of pieces produced, or the
8 appropriate overtime rate

9 **F. Failure to Timely Pay All Wages Owed**

10 14. California Labor Code sections 201 and 202 require immediate payment of all
11 unpaid wages at the time an employee is discharged or resigns from employment. Plaintiff alleges
12 that as a result of the aforementioned failure by Defendant to compensate for all hours worked,
13 Defendant has also willfully failed to pay all wages owed to Plaintiff and Class Members upon
14 discharge or resignation, including wages for all hours worked, overtime wages, and meal and rest
15 period premium wages.

16 **G. Defendant Are Liable for Civil Penalties Under PAGA for their Underlying**
17 **Labor Code Violations**

18 15. PAGA provides that “any” Labor Code provision giving rise to civil penalties
19 recoverable by the Labor and Workforce Development Agency (LWDA) may be recovered in a
20 civil action brought by an aggrieved employee. (Labor Code § 2699(a); *Huff v Securitas Sec.*
21 *Servs. USA, Inc.* (2018) 23 Cal.App.5th 745, 754.) Plaintiff allege that Defendant is liable for a
22 host of civil penalties under PAGA for their alleged violations of the Labor Code and Wage Order
23 4 including:

- 24 a) Civil penalties under Labor Code section 1197.1 for Defendant’s alleged
25 violations of minimum wage provisions when they were not paid for all
26 hours worked before and after their scheduled shifts hours;
27 b) Civil penalties under Labor Code section 558 for Defendant’s alleged
28 failure to pay lawful overtime wages when Class Members were not paid
for overtime hours worked before and after their scheduled shifts;

- c) Civil penalties under Labor Code § 226.3 for Defendant’s alleged failure to issue accurate wage statements;
- d) Civil penalties under Labor Code § 2699(f)(2) for Defendant’s alleged failure timely pay Plaintiff and the Class all wages owed;
- e) Civil penalties under Labor Code § 210 for Defendant’s alleged failure to all wages when due under Labor Code § 204;
- f) Civil penalties under Labor Code § 2699(f)(2) for Defendant’s alleged failure to provide lawful meal and rest breaks to Plaintiff and the Class; and
- g) Civil penalties under Labor Code § 1174.5 for Defendant’s alleged failure to maintain payroll records showing total hours worked daily by and the wages paid to Plaintiff and the Class.

III. LITIGATION HISTORY OF THE CASE

16. On September 16, 2020, Plaintiff filed his original complaint seeking to recover wages and statutory penalties on behalf of himself and others similarly situated against Defendants alleging: (1) failure to pay minimum wages in violation of the Wage Orders and Labor Code sections 221, 223, 224, 226.2, 1194, 1194.2 and 1197; (2) failure to pay overtime wages in violation of the Wage Orders and Labor Code sections 510, 1194, and 1198; (3) failure to provide lawful meal periods or premium wages in lieu thereof in violation of the Wage Orders and Labor Code sections 226.7 and 512; (4) failure to provide lawful rest periods or premium wages in lieu thereof, in violation of the Wage Orders and Labor Code sections 226.7 and 512; (5) failure to provide accurate itemized wage statements in violation of the Wage Orders and Labor Code section 226; (6) failure to timely pay all wages due upon termination, in violation of Labor Code sections 201 & 202; (7) failure to reimburse Plaintiff and Class Members for legitimate business expenses in violation of Labor Code section 2802; (8) failure to produce Plaintiff’s employment records pursuant to a written request in violation of Labor Code section 225 and 1198.5; (9) and violation of the California Unfair Competition Law (Bus. & Prof. Code section 17200, *et seq.*). Plaintiff complied with PAGA’s administrative exhaustion procedure by giving written notice to the employer and the Labor and Workforce Development Agency (“LWDA”) of

1 the alleged Labor Code and Wage Order violations and the facts and theories supporting those
2 violations. On November 25, 2020, Defendants filed an Answer to the Complaint. Plaintiff's
3 PAGA letter was sent on or about December 3, 2020. On June 29, 2019, Plaintiff filed his First
4 Amended Complaint adding a PAGA cause of action.

5 17. Shortly after Defendants filed their answer, the parties began discussing the
6 potential for early mediation. After getting bogged down in copious back and forth with defense
7 counsel over the scope of informal discovery required for early mediation, Plaintiff served a full
8 spate of written discovery upon Defendant, including Request for Production of Documents,
9 Special Interrogatories, and Form Interrogatories. Shortly after Plaintiff propounded his written
10 discovery requests, the parties began a more fruitful discussion of the informal discovery Plaintiff
11 need to adequately prepare for mediation, including the following:

12 A. Aggregate Data

- 13 i. List of all Defendant locations/facilities/hubs where Class Members
performed work during the Class Period
- 14 ii. Total number of Class members for the Class Period
- 15 iii. Total number of PAGA Group members for PAGA Period
- 16 iv. Total number of piece-rate class members during the Class Period
- 17 v. Total number of piece-rate employees during the PAGA Period
- 18 vi. List of Class Member and PAGA Group employee job positions and the
total number in each position at each location for the Class Period and
for the PAGA Period
- 19 vii. Total number of Class members who separated from their employment
during the Class Period
- 20 viii. Total number of PAGA Group members who separated from their
employment during the PAGA Period
- 21 ix. Total number of workdays for all Class members during the Class
Period
- 22 x. Total number of workdays for piece-rate Class members during the
Class Period
- 23 xi. Total number of workweeks for all Class members during the Class
Period
- 24 xii. Total number of workweeks for piece-rate Class members during the
Class Period
- 25 xiii. Total number of pay periods for all PAGA Group members during the
PAGA Period
- 26 xiv. Total number of pay periods for piece-rate PAGA Group members
during the PAGA Period
- 27 xv. Total number of Meal Period Premiums paid to Class members during
28 the Class Period

- xvi. Total number of Rest Period Premiums paid to Class members during the Class Period
- xvii. Total number of Meal Period Premiums paid to Class members during the PAGA Period
- xviii. Total number of Rest Period Premiums paid to Class members during the PAGA Period
- xix. Total number of Class members who signed a meal period waiver in effect at any time during the Class Period
- xx. Total number of Class members who signed on duty meal agreements during the Class period
- xxi. Total number of Class members who were laid off or furloughed due to recent events (i.e. COVID-19 pandemic)
- xxii. Total number of Class members and job positions covered by each collective bargaining agreement in effect during the Class period
- xxiii. Total number of Class members who executed arbitration agreements

B. Employee Records

- i. The names and contact information (addresses, telephone number(s), and email address(es) for 50% of Class Members to be randomly selected
- ii. Dates and positions of employment for all Class members
- iii. Dates that each Class member was laid off or furloughed due to recent events (i.e. COVID-19 pandemic), and expected date of return (if applicable)
- iv. Pay Period type (i.e. bi-weekly, semi-month, etc.) for Class members during the Class Period
- v. Employee schedules/scheduling data in a sortable electronic format (i.e. Excel) for all Class members during the Class Period
- vi. Time records/timekeeping data in a sortable electronic format for all during the Class Period
- vii. Payroll records/data in a sortable electronic format for all Class members during the Class Period
- viii. Records in a sortable electronic format of dates, times, service type and pay earned for services provided by piece-rate Class members during the Class Period
- ix. Expense reimbursement reports/data in a sortable electronic format for all Class members during the Class Period
- x. Wage Statements for all Class members during the Class Period
- xi. 2810.5 Notices for all Class members during the Class Period

C. Documents

- i. Written policies, procedures, guidelines, and practices related to claims in Lawsuit, including: employee job classifications, employee compensation (including hourly wages, piece-rate, overtime, bonuses, and any other form of compensation), timekeeping, meal periods, rest periods, split shifts, reporting time, paid time off (i.e. vacation and sick leave), and expense reimbursement in effect during the Class Period;

- 1 ii. All compensation plans in effect during the Class Period, including
- 2 bonus, incentive, piece-rate, commission, and/or other compensation
- 3 plans in effect during the Class Period
- 4 iii. Meal Period waiver and on duty meal agreement exemplars
- 5 iv. Wage statement exemplars
- 6 v. All collective bargaining agreements in effect during the Class period
- 7 vi. To the extent not previously produced all documents related to each
- 8 named Plaintiffs employment, including personnel file, terms of
- 9 employment, wage theft notices, time records, audit trails, wage
- 10 statements, commission payments, commission statements, commission
- 11 plans, acknowledgements and agreements, work schedules, training
- 12 records, expense reports, complaints, performance reviews,
- 13 communications and business device records

14 D. Financial Disclosures

- 15 i. Applications, and results of applications, for government and/or private
- 16 loans or other aid as a result of recent events (i.e. COVID-19 pandemic)
- 17 ii. Tax returns for the past three (3) years, including:
 - 18 • Schedules of total compensation paid to equity holders, family
 - 19 members, and key personnel; and
 - 20 • Depreciation schedules
 - 21 • Any projections/budgets/forecasts of revenues and expenses
 - 22 prepared for the current fiscal year
- 23 iii. Any other documents that demonstrate Defendants financial position
- 24 (i.e. profit loss statements, business agreements with wireless providers,
- 25 closure of retail stores, etc.)

26 18. The payroll, timekeeping, and electronic data produced by Defendants were quite

27 useful in demonstrating the class damages for purposes of mediation. For example, the failure to

28 pay all minimum and overtime wages claims were evident through cross-referencing the

 timekeeping and payroll data. Although class members were not paid hourly, there were

 electronic timekeeping records detailing the start and end times of their shifts. Plaintiff's data

 analyst determined each class member's regular rate, as dictated by the piece rate earned for non-

 overtime hours on a weekly basis, for each class member's pay period and was then able to

 determine which workers suffered minimum and overtime wage violations by comparing these

 with the electronic payroll data. Likewise, the electronic timekeeping data gave a good indication

 of how many rest breaks each class member was entitled to for each workday, and this was

 multiplied by each worker's regular rate for the week to determine the amount of separate

 payments pursuant to Labor Code section 226.2. that Defendants had failed to pay to Plaintiff and

1 the class. Further, the meal period claim was also susceptible to class-wide proof since
2 Defendants had failed to comply with the requirement that start and end time of meal periods be
3 recorded.

4 **IV. SETTLEMENT**

5 19. On July 19, 2021, the parties spent a full day in mediation with experienced
6 mediator and former Associate Justice of the California Court of Appeals for the Fifth District,
7 Steven Vartabedian. Although the parties were not able to resolve the action at the mediation on
8 July 19th, Justice Vartabedian continued to work on the matter, and on August 4, 2021, Justice
9 Vartabedian made a mediator's proposal for \$450,000 to settle the class and representative claims
10 that was subsequently accepted by both parties. The settlement reached and presented to the Court
11 with this Motion is the product of informed, arms-length negotiation between the parties. The
12 mediator, Justice Vartabedian, was thoroughly apprised of the arguments and facts of this case by
13 means of extensive briefing and factual presentations by both Plaintiff and Defendants, and the
14 core material terms of the settlement at issue here were proposed by Justice Vartabedian. In
15 reaching the settlement, counsel on both sides relied on their respective and substantial litigation
16 experiences in similar class and PAGA actions.

17 20. The \$450,000 Settlement is substantial enough to encompass any non-exempt
18 delivery drivers who work or have worked for Defendants within the State of California during
19 the period four (4) years prior to the filing of the initial complaint in this action (September 16,
20 2016) through preliminary approval. The Class does not include any individuals who already have
21 resolved the claims asserted in the Action, whether by settlement or adjudication.

22 21. Under the Settlement, Defendant is obligated to pay the Gross Settlement Amount
23 of \$450,000. (Settlement at § III.A.) Within thirty (30) days following the Effective Date,
24 Defendants will transfer to the Claims Administrator the Gross Settlement Amount, which will
25 then be distributed as provided for in the Settlement. (*Id.* at §§ III.B-C.) The Gross Settlement
26 Amount does not include required employer payroll tax contributions on the wage portion of
27 Class Member settlement shares, which Defendant will pay separately. (*Id.*)

28 22. The Settlement provides for a service award to the named Plaintiff (subject to court

1 approval), in addition to his Settlement Share, of up to \$15,000 as compensation for his service as
2 Class Representative (Settlement at § III.C.1.) and in acknowledgement of the risk Plaintiff
3 assumed, and that he chose to pursue an action on behalf of eighty-nine (89) fellow workers
4 instead of pursuing his own individual claims; payment to Class Counsel of up to 33 & 1/3 % of
5 the Gross Settlement Amount for their reasonable attorneys' fees (\$150,000), as well as up to
6 \$10,000 for their reasonable litigation expenses incurred in investigating and prosecuting the case,
7 preparing for and negotiating at the mediation, conducting an elaborate damage analysis in this
8 case with the assistance of a database analyst, documenting the Settlement, securing preliminary
9 and final approval of the Settlement, and related tasks (*Id.* at § III.C.2.); payment of the
10 Settlement Administrator's reasonable fees and expenses not to exceed \$5,950 (*Id.* at § III.C.3);
11 payment of Defendants' mediation costs (\$2,000), and \$10,000 to settle the PAGA claim, with
12 seventy-five percent (75%) of the PAGA Payment (\$7,500) to be paid to the California Labor and
13 Workforce Development Agency ("LWDA") as required by PAGA (*Id.* at § III.D.).¹ All
14 reasonable efforts will be undertaken by the Claims Administrator and by Class Counsel to ensure
15 that class members claim and receive their funding in this case.

16 23. After the other amounts noted above are deducted from the Gross Settlement
17 Amount, the Net Settlement Amount will be distributed to the Class Members on a *pro rata* basis
18 based on the Class Member's total number of workweeks of employment during the Class Period:

19

20 A Participating Class Member's Settlement Share shall be calculated
21 by multiplying the Net Settlement Amount by the ratio of (a) the
22 number of pay periods worked by the Class Member for Defendants
23 between September 16, 2016 through the date of preliminary
24 approval (the "Class period"), and (b) the total number of pay periods
25 worked by all Participating Class Members during the Class period.

26 (Settlement at § III.B.1.)

27 24. I have reviewed this proposed method of distribution and believe that, on the
28 whole, it serves the purpose of providing a simple, readily determinable, and fair method for

¹ Plaintiff's counsel electronically submitted the proposed Settlement to the LWDA on November 5, 2021.

1 distribution, while also allowing for a distribution that corresponds closely to the alleged damages
2 and likely recoveries, which are based upon various theories of liability. Further, this method will
3 allow Class Members to review and confirm for themselves the number of months of
4 employment. The formula employed in the Settlement is commonly used in wage-and-hour cases,
5 and is appropriate in this case, where the vast majority of workers experience the same working
6 conditions and have similar claims that roughly correlate with the above formula.

7 25. In an attempt to maximize the recovery of the Class in exchange for their release of
8 claims, the Settlement is a “checks-mailed” settlement. (Settlement at § III.B.3.) In sum, this
9 process entails the Settlement Administrator mailing settlement checks to each Class Member
10 who has not opted-out of the Settlement and for whom the Claims Administrator has not received
11 a returned Class Notice Packet and no current address for the Class Member has been found
12 through Accurant or other skip trace methods.

13 26. Following preliminary approval of the Settlement by the Court, the Settlement
14 Administrator will mail a Class Notice Packet to each of the approximately eighty-nine (89) Class
15 Members detailing the terms of the Settlement and how a Class Member can request exclusion
16 from the Settlement or object to the terms of the Settlement. (Settlement at § III.F.3.c.) Included
17 in Class Notice Packet in section F will be an estimate of the Class Member’s respective share of
18 the Settlement based on the number of pay periods worked by that Class Member reflected in
19 Defendants’ records. Attached to the Class Notice, the Individual Class Member Dispute Form
20 will detail for each Class Member the number of work weeks worked upon which their
21 corresponding estimated share of the net settlement is based. (*Id.* at § III.F.3.b.) A Class Member
22 who wishes to dispute the number of workweeks worked outlined in the Class Member Dispute
23 Form may do so by notifying the Settlement Administrator in writing by mail postmarked no later
24 than 60-days after the dispute form has been mailed to them, or by FAX or email on the same
25 deadline. (*Id.* at § III.F.3.b.) The Settlement Administrator will make the final determination as to
26 the correct number of compensable workweeks for such a Class Member and will inform the
27 Class Member regarding the final determination of their total number of workweeks. (*Id.*) The
28 parties will provide the Court with a complete and accurate list of all Class Members who

1 disputed their workweeks in the final approval motion. (*Id.*) If a Class Notice Packet is returned
2 because of an incorrect address, the Settlement Administrator will promptly, and not later than 7
3 days from receipt of the returned packet, search for a more current address for the Class Member
4 using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Class
5 Notice Packet to the Class Member. (*Id.* at § III.F.2.c.)

6 27. Sixty-six percent (66%) of each Settlement Share will be treated as a payment in
7 settlement of the Class Member’s claims for statutory and civil penalties. Thirty-four percent
8 (34%) of each Settlement Share will be treated as payment in settlement of the Class Member’s
9 claims for interest. Settlement at § III.B.2.) The Sixty-six percent (66%) portion is the deemed the
10 “Non-Wage Portion” from which no deductions will be made. (Settlement at § III.B.2.a.) The
11 remaining thirty-four percent (34%) of each Settlement Share (the “Wage Portion”) will be
12 treated as a payment in settlement of the Participating Class Member’s claims for unpaid wages.
13 (*Id.*) Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and
14 deductions, and the Settlement Administrator will issue to the Class Member a Form W-2 with
15 respect to the Wage Portion. (*Id.*) The parties agreed to allocating sixty-six percent (66%) of
16 Class Members’ Settlement Shares as Wage Portion because Plaintiff’s damage model,
17 constructed through the informal exchange of evidence Defendant provided a roughly analogous
18 breakdown between wages and statutory and civil penalties (70% of damages attributable to civil
19 and statutory penalties and 30% of damages attributable to wages).

20 28. The scope of the release by all participating Class Members (all Class Members
21 other than those who elect not to participate in the Settlement) tracks the scope of Plaintiff’s
22 allegations and is not broader than the wage-and-hour claims at issue in the operative complaint.
23 (Settlement at § III.G.2.) There is no provision in the Settlement for a Civil Code § 1542 waiver
24 by absent Class Members. (*Id.*)

25 29. A Class Member who submits a timely request for exclusion will not participate in
26 or be bound by the Settlement and the Judgment and will not receive a Settlement Share, but will
27 retain the right, if any, he or she may have to pursue a claim against Defendant. (Settlement at §
28 III.F.3.c.)

1 30. Any Class Member who so wishes may object to or comment on the Settlement; or
2 elect not to participate in the Settlement. (Settlement at § III.F.3.) The parties will provide the
3 Court in the final approval papers with a complete and accurate list of all Class Members who: (1)
4 object to the Settlement including their specific objections; (2) have disputed their number of
5 workweeks as detailed in the Class Member Dispute Form; and (3) have requested exclusion from
6 the Settlement . (*Id.* at § III.F.3.) The Class Notice fully explains the objection/comment and
7 exclusion procedures. (See Class Notice attached to the executed Settlement Agreement
8 submitted herewith.)

9 31. A Class Member must cash his Settlement Share check within 180 calendar days
10 after it is mailed to him. (Settlement at § III.F.8.) If a check is returned to the Settlement
11 Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the
12 Class Member at his or her correct address. (*Id.*) If one or more Class Members fail to cash the
13 check for their Settlement Shares within 180 days after it is mailed to their last known address,
14 and if the aggregate funds represented by the uncashed checks total \$5,000.00 or more, they will
15 be distributed to each Class Member who is participating in the Settlement and cashed his/her
16 check for his Settlement Share in the same *pro rata* shares as the Class Member's Settlement
17 Share divided by the sum of all Settlement Shares of Class Members who cashed checks for their
18 Settlement Shares. (*Id.*) If the aggregate funds represented by the uncashed checks total less than
19 \$5,000.00, they will be donated to Centro Legal de la Raza, the designated *cy pres* recipient. (*Id.*)
20 Should there be a distribution to the *cy pres* recipient pursuant to the Settlement, Plaintiff's
21 counsel will submit a post-judgment report of the amount actually paid to the Class and an
22 amendment of the judgment to indicate the amount paid to the *cy pres* pursuant to CCP § 384.

23 32. I believe that the notice procedure established by the Settlement Agreement and
24 summarized herein is reasonable under the circumstances and will efficiently and accurately
25 ensure that Notice is provided to the eight-nine (89) Class Members. Further, I believe that the
26 Notice clearly explains the proposed Settlement and the options to opt-out of the Settlement or
27 contest it at the Final Approval Hearing.

28

V. OPINION OF CLASS COUNSEL AND REPRESENTATIVES AND DUE DILIGENCE

33. Plaintiff's counsel is of the view that central to any certification, litigation, mediation or resolution of a wage-and-hour case is reviewing the core payroll and timekeeping records where available. As detailed in Section III of this declaration, pursuant to a stipulation to engage in mediation, Defendant produced a wealth of payroll and timekeeping documents and data. Because of the volume of records and the fact that the electronic timekeeping records needed to be cross referenced with the payroll documents/data for the class, Plaintiff's counsel required the assistance of a data analyst to structure the data and perform the necessary queries in order to construct as reliable of a damage model as possible given the available data/documents. Further, Plaintiff's counsel spent considerable time and energy interviewing class members confirming and refining facts and theories alleged in the FAC. I strongly believe that the aforementioned investigation and discovery allowed Plaintiff's counsel to evaluate as best as possible under the circumstances the strengths of Plaintiff's class and representative claims and the risks presented with ongoing litigation. Specifically, the informal discovery exchanged prior to mediation led Plaintiff's counsel to estimate the value the claims alleged as follows:

UNPAID WAGES FROM PAYING LESS THAN THE MINIMUM WAGE	
LC § 1194 Minimum Wages	\$12,565
LC § 1194.2 Liquidated Damages	\$12,565
UNPAID REST BREAKS	
LC § 226.2 Unpaid Rest Breaks	\$44,334
OVERTIME WAGES	
LC § 510/Wage Orders 8 & 13	\$62,632
MEAL PERIODS	
LC §§ 512, 226.7 Premium Wages	\$322,681
REST BREAKS	
LC § 226.7 Premium Wages	\$331,971
REIMBURSEMENT FOR BUSINESS EXPENSES	
LC § 2802 Reimbursement for Business Expenses	\$40,228

1	WAGE STATEMENT PENALTIES	
2	LC 226(e) Statutory Wage Statement Penalties	\$161,200
3	WAITING TIME PENALTIES	
4	LC 203 Statutory Waiting Time Penalties	\$240,083
5	PAGA PENALTIES	
6	LC § 558 Civil Penalties for Overtime Wages (LC § 510, Wage Orders)	\$41,000
7	LC § 1197.1 Civil Penalties for Unpaid Minimum Wages (LC § 1194, Wage Orders)	\$2,500
8	LC § 2699(f)(2) Civil Penalties for Meal Period Violations (LC §§ 512, 226.7)	\$145,800
9	LC § 2699(f)(2) Civil Penalties for Rest Period Violations (LC § 226.7, Wage Orders)	\$145,800
10	LC 2699(f)(2) Civil Penalties for Failure to Sep. Pay Rest Periods (LC § 226.2)	\$95,100
11	LC § 226.3 Civil Penalties for Wage Statement Violations (LC § 226)	\$364,500
12	LC § 2699(f)(2) Civil Penalties for Failure to Timely Pay Wages (LC § 203)	\$3,600
13	LC § 2699(f)(2) Civil Penalties for Failure to Reimburse (LC § 2802)	\$145,800
13	LC § 1174.5 Civil Penalties (LC § 1174)	\$36,500
14	Total Exposure Analysis for Purposes of Mediation	\$2,196,294

15 34. Following is a more detailed explanation of the basis for Plaintiff’s class and
16 PAGA damages.

17 **A. Overtime Wages Owed**

18 Plaintiff estimated that the total, maximum overtime wages owed to the class was
19 approximately \$62,632, including 10% simple interest. From the comparative analysis of
20 Defendants’ timekeeping and payroll records produced during informal discovery, Plaintiff’s data
21 analyst determined that there were underpayments of overtime wages to Plaintiff and the Class
22 during years 2019, 2020, and 2021. This underpayment can be attributed to the fact that Altia
23 failed to calculate worker overtime rates using the piece rate earned in order determine each
24 worker’s regular rate of compensation. Therefore, Plaintiff’s damage analyst first calculated each
25 class member’s regular rate of pay per pay period (this changed on a weekly basis since class
26 members were paid piece rate) and multiplied this by either 1.5 for hours greater than 8 per day
27 and 40 hours per week or by 2 for hours worked greater than 12 per day and multiplied this by the
28 number of overtime hours worked during that week. This was then compared to what was actually

1 paid to the class member during that pay period to determine the amount of unpaid overtime
2 hours owed. This analysis yielded a total of \$50,426 in estimated unpaid overtime with \$12,206 in
3 interest for a total of \$62,632 in unpaid overtime.

4 **B. Unpaid Minimum Wages Owed**

5 Defendants maintained a piece rate compensation system for the majority of the class
6 period. While in most pay periods this was sufficient to meet the minimum wage requirements,
7 Plaintiff's damage analyst determined that there were a comparatively small number of shifts
8 during which the piece rate payments fell below the minimum wage when accounting for the
9 number of hours worked—51 shifts. To determine the amount of non-overtime wages owed,
10 Plaintiff's damage analyst determined the number of hours that were not paid at at least the
11 minimum wage and multiplied those by the minimum wage at the time. The result is that is that
12 Plaintiff estimates that the amount of unpaid minimum wage violations at \$10,116, including
13 interest and a corresponding amount (\$10,116) in liquidated damages pursuant to Labor Code §
14 1194.2.

15 **C. Meal Period Premiums**

16 Because Defendants maintained a policy of not recording meal periods, and class member
17 interviews confirm that they regularly were not able to take meal periods, Plaintiff's damage
18 model for mediation assumed a violation rate of 100% during the class period, which totals
19 14,658 shifts. Meal premiums owed to the class were calculated by multiplying the number of
20 shifts where no meal period was recorded (14,658) by the average hourly rate (\$17.72) + 10%
21 simple interest for an estimated \$322,681.

22 **D. Rest Period Premiums**

23 Plaintiff's data analyst calculated that there were approximately 15,080 shifts greater than
24 3.5 hours during the class period requiring at least one paid rest period. For purposes of
25 mediation, Plaintiff assumed a 100% violation rate for this period. Rest period premiums owed to
26 the class were calculated by multiplying the number of shifts greater than 3.5 hours (15,080) by
27 the average hourly rate (\$17.72) + 10% simple interest for an estimated \$331,971.

28

1 **E. Wage Statement Penalties**

2 Based on the data/documents produced, Plaintiff's data analyst estimates the total number
3 of pay periods within the one-year statutory period for wage statement penalties was 1649 with
4 approximately 74 class members having worked during that period. Based on assessing \$50 for
5 the first penalty during the statutory period for each worker, and \$100 for each subsequent
6 violation, without exceeding \$4,000 total per class member, Plaintiff estimated Defendant's
7 liability for wage statement penalties at \$161,200.

8 **F. Waiting Time Penalties**

9 Based on the data/documents produced, Plaintiff's data analyst estimates that there are
10 forty-nine (49) workers who left Defendants employ during the statutory period, including
11 Plaintiff, for whom waiting time penalties are owed. Based on the 30-day maximum waiting time
12 penalties for those Class Members, and using a \$17.72 average hourly rate, Plaintiff estimates
13 that Defendant's liability for waiting time penalties under Labor Code section 203 is \$240,803
14 (\$17.72 average hourly rate x 8 hours x 30 days).

15 **G. PAGA Penalties**

16 Plaintiff submitted his PAGA letter to the LWDA on December 3, 2020. Therefore, the
17 PAGA period for civil penalties runs from December 3, 2019 to the date of the mediation (July
18 19, 2021).

19 i. LC § 1197.1 Civil Penalties for Unpaid Minimum Wages (LC § 1194, Wage
20 Orders

21 Plaintiff alleges that he and members of PAGA workforce suffered a minimum wage
22 violation when they were not paid at least the minimum wage for all hours worked on occasion
23 due to Defendants' piece rate compensation system. Plaintiff contends that civil penalties are due
24 pursuant to Labor Code section 1197.1 at the rate of \$100.00 per worker for each pay period
25 during the PAGA period in which he and class members suffered a minimum wage violation.
26 Based on Plaintiff's data analysis, Plaintiff determined that there are unpaid minimum wage
27 violations in 25 employee shifts during the PAGA period. Therefore, Plaintiff calculated
28 maximum exposure for civil penalties for failing to pay the minimum wages owed is \$2,500 (25

1 shifts x \$100).

2 ii. LC § 558 Civil Penalties for Overtime Wages (LC § 510, Wage Orders)

3 The failure to pay overtime wages gives rise to civil penalties pursuant to Labor Code
4 section 558. *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112, 1144-45 (2012).
5 The penalty for this violation is \$50 for any initial violation for each underpaid employee each
6 pay period. Based on the data provided to Plaintiff, Plaintiff's data analyst calculated that there
7 are 820 pay periods during the PAGA period in which aggrieved workers were not compensated
8 at their lawful overtime rating. Plaintiff calculated maximum exposure for civil penalties for
9 allegedly failing to pay the overtime wages owed pursuant to section 558 is \$41,000 (820 pay
10 periods x \$50).

11 iii. LC § 2699(f)(2) Civil Penalties for Failure to Provide Separately Paid Rest
12 Breaks (LC § 226.2)

13 Defendants' failure to provide separately paid rest breaks to class members earning piece
14 rate results in civil penalties under Labor Code § 2699(f)(2), the default civil penalty provision
15 that applies to violations of Labor Code sections 226.2 and provides for \$100 for any initial
16 violation for each underpaid employee each pay period. Based on the data produced, Plaintiff's
17 data analyst calculates that there were approximately 951 pay periods during the PAGA period
18 during which rest period wages were not separately paid. As a result, Plaintiff estimated
19 Defendant's maximum exposure to civil penalties for alleged meal and rest break violation to be
20 \$95,100 (951 pay periods x \$100) each.

21 iv. LC § 2699(f)(2) Civil Penalties for Meal and Rest Period Violations (LC
22 §§ 512, 226.7)

23 There is no Labor Code section that provides a civil penalty for rest breaks or meal
24 periods that are otherwise unlawful. As such, the default civil penalty provision stated in Labor
25 Code section 2699(f)(2) applies to violations of Labor Code sections 226.7 and 512 and provides
26 for \$100 for any initial violation for each underpaid employee each pay period. Plaintiff's data
27 analyst calculates that there were approximately 1458 pay periods during the PAGA period for
28 which rest and meal period violations are alleged. As a result, Plaintiff estimated Defendant's

1 maximum exposure to civil penalties for alleged meal and rest break violation to be \$145,800
2 (1458 pay periods x \$100) each.

3 v. Defendant is Liable for Civil Penalties for Wage Statement Violations (LC
4 § 226.3)

5 The failure to provide an accurate wage statements pursuant to Labor Code section 226
6 gives rise to civil penalties in the amount of \$250 per violation, pursuant to Labor Code section
7 226.3. Plaintiff's data analyst calculated that there were approximately 1458 pay periods during
8 the PAGA period resulting in \$364,500 in maximum PAGA penalties for the alleged wage
9 statement violations (1458 pay periods x \$250).

10 vi. LC § 2699(f)(2) Civil Penalties for Failure to Timely Pay Wages (LC 203)

11 Using Labor Code section 2699(f)(2) as the default civil penalty provision with the
12 knowledge that 36 class members left Defendants' employ during the PAGA period, Plaintiff
13 calculates that Defendant's maximum liability for civil penalties for alleged waiting time
14 penalties under Labor Code section 203 is \$3,600.

15 vii. LC § 2699(f)(2) Civil Penalties for Failure to Reimburse (LC § 2802)

16 There is no specific Labor Code section that provides a civil penalty for failure to
17 reimburse business expenses. s such, the default civil penalty provision stated in Labor Code
18 section 2699(f)(2) applies to violations of Labor Code section 2802 for failure to pay reimburse
19 business expenses. As stated above, Plaintiff and the PAGA Workforce suffered a violation of
20 Labor Code section 2802 in every pay period in which they incurred a charge for maintaining
21 their personal cell phone and plan, without receiving any indemnification from Defendants for the
22 use of their personal cell phone "in direct consequence of the discharge" of their work duties.
23 Plaintiff estimate that 100% of the PAGA Workforce sustained this violation in every pay period
24 during the PAGA Period, and therefore Defendants' liability for civil penalties under Labor Code
25 section 2699(f) is \$145,800 (1458 shifts during the PAGA period x \$100).

26 viii. LC § 1174.5 Civil Penalties (LC § 1174)

27 Labor Code section 1174(d) requires employers to keep "payroll records showing the
28 hours worked daily by and the wages paid to" all employees. Section 1174.5 provides for

1 recovery of “a civil penalty of five hundred dollars (\$500)” against an employer “who willfully
2 fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete
3 records required by subdivision (d) of Section 1174.” Here, Plaintiff alleges that Defendant failed
4 to maintain accurate payroll records for him and the PAGA Workforce because Defendant failed
5 to separately compensate piece rate workers for their rest breaks. Plaintiff’s data analyst calculates
6 that there were 74 workers who fall within the PAGA period. Based on this, Plaintiff’s data
7 analyst calculates that Defendant’s maximum exposure for civil penalties stemming from alleged
8 violations of the Labor Code section 1174 to be \$36,500 (74 x \$500).

9 35. Based on Plaintiff’s counsel’s investigation and the detailed, voluminous informal
10 discovery exchanged in this case, and in consultation with the named plaintiff, I am of the opinion
11 that the Class Settlement with Defendants for the consideration offered and on the terms set forth
12 in the Settlement Agreement is fair, reasonable, adequate and is in the best interest of the putative
13 class members in light of all known facts and circumstances, including the risk of significant
14 delay, the defenses asserted by Defendants, the amount of potential damages in this case and
15 uncertainties regarding class certification, success on the merits at trial and potential appellate
16 review.

17 36. The compromise figure proposed by the Settlement also takes into account that
18 Defendants vigorously contest liability in this action, are represented by talented counsel, and are
19 prepared to vigorously defend against these claims if the action is not settled. While Plaintiff and
20 his counsel firmly believe that they would prevail on the core wage claims (minimum wage,
21 overtime, failure to separately pay rest breaks) given the class-evidence, the meal and rest period
22 claims faced significant challenges regarding individual issues predominating that render
23 certification of the meal and rest period claims far less than certain. For example, even though
24 Defendants failed to record meal periods during much of the class period, individual issues are
25 undeniably present with determining whether or not workers were actually provided with a 30-
26 minute lunch notwithstanding defendants’ failure to record meals. The rest period claim faced
27 similar challenges as there was little evidence of a class-wide policy, capable of common proof,
28 evidencing that Defendants failed to authorizing and permit rest periods, and the claims would be

1 likely be subject to individual proof. In other words, the evidence in support of the failure to
2 provide rest periods would have to be largely testimonial, and given the potential variance
3 inherent in testimonial evidence, certifying the rest period claim is far from guaranteed. These
4 evidentiary challenges, inherent in certifying and maintaining certification of claims where class-
5 wide evidence is lacking, make trial a significant risk in this matter and also increase the
6 likelihood of appeals. The PAGA penalties alleged presented another challenge. The PAGA
7 penalties for the underlying Labor Code violations amount to approximately \$900,000 of
8 Plaintiff's roughly \$2.1M damage estimate for mediation. While it is likely that a court would
9 award some measure of civil penalties pursuant to PAGA for the Labor Code violations that
10 Plaintiff proved at trial, trial courts have discretion to reduce the PAGA penalties awarded
11 pursuant to Labor Code § 2699, *et seq.* and this was a substantial risk for Plaintiff. For one,
12 Defendants changed their compensation practices that resulted in the alleged wage violations
13 since Plaintiff filed the action. Another factor that could weigh in favor of reducing the alleged
14 PAGA penalties is the fact that Altia Transportation is a relatively new and small business that
15 started delivery services in February 2018, and was found by a relatively young individual. Given
16 the size of the business, the threat of bankrupting the business, and the fact that it does not have a
17 longstanding history of labor abuses could also weigh in favor of a reduced PAGA award should
18 the case proceed to trial. In sum, I believe should this litigation proceed, Plaintiff would face
19 significant hurdles in his efforts to certify all of the claims alleged, prevail, and secure a judgment
20 that does not pose substantial threat of bankruptcy to small and relatively new business. Of
21 course, there is also a risk that Defendants would prevail in its asserted defenses.

22 37. The Settlement provides for significant recovery for Class Members. Even if
23 Plaintiff was to prevail at trial, he would be required to expend significant additional time and
24 resources, potentially outweighing any additional recovery obtained through successful litigation.
25 In any case, continued litigation would also delay payment to the Class. Also, of note is the fact
26 that Plaintiff's lawsuit arguably led to Defendants changing their compensation practices, curbing
27 the alleged failure to separately pay for rest breaks and failure to pay minimum and overtime
28 wages. Further, while the damage modeling Plaintiff's counsel completed in preparation for

1 mediation suggests that damages from wages and penalties could at best amount to just over \$2M
2 in total at trial, the evidence and changing legal landscape make that damage estimate far less than
3 certain. In addition while it is likely that a court would award some measure of civil penalties
4 pursuant to PAGA for the Labor Code violations that Plaintiff proved at trial, trial courts have
5 discretion to reduce the PAGA penalties awarded pursuant to Labor Code § 2699, *et seq.* and this
6 was a substantial risk for Plaintiff.

7 38. Taking all of these factors into account, including the likelihood of appeal on
8 complex and some less than certain claims, Plaintiff's counsel believes the Settlement with
9 Defendant for the consideration stated, and on the terms set forth in the Settlement, is fair,
10 reasonable, and adequate and is in the best interest of the Settlement Class in light of all known
11 facts and circumstances, including the risk of the significant delay. The Settlement is in the best
12 interest of judicial efficiency in this case, as it would eliminate a lengthy and intense class action
13 and PAGA lawsuit from this Court's calendar. While the proposed \$450,000 settlement provides
14 for approximately 21% of total damage model developed for mediation purposes, it is worth
15 noting that the core wage claims (minimum wage including liquidated damages, overtime, and
16 separately paid rest breaks) have a combined value of \$132,096. Further, when the core wage
17 claims value is added with the derivative statutory penalties stemming from these claims (Labor
18 Code section 226 and 201, 202), the damage model amounts to \$533,379. When considering this
19 recovery with the challenging nature of the meal and rest period claims, the discretionary nature
20 of the PAGA claim, the proposed \$450,000 settlement is an outstanding recovery for the Class.
21 Should the Court approve the Settlement as presented, the participating Class Members will share
22 in a Net Settlement of at least \$261,550, after deducting for attorneys' fees, litigation costs,
23 PAGA payment to the LWDA, Defendants' mediation costs, the class representative enhancement
24 award, and settlement administration costs. The average payment to participate Class Members
25 will be approximately \$2,888. After taking into account the likelihood of success on each claim,
26 Plaintiff's counsel determined that the settlement amount of \$450,000 was fair and reasonable
27 given the circumstances.

28

1 **VI. THE PLAINTIFF IN THIS CASE**

2 39. Named Plaintiff Benito Segura has devoted substantial time and effort to
3 prosecuting the claims asserted in the operative complaint, including gathering, organizing, and
4 reviewing documents essential to the case, assisting counsel with investigating the case, and
5 participating actively in the mediation to resolve the claims. Plaintiff’s counsel will submit a
6 declaration from the proposed Class Representative at Final Approval in support of his requested
7 service award detailing his participation in the action, including specifics of actions taken, time
8 committed, and risks faced.

9 40. Plaintiff Benito Segura believes the Settlement is fair and reasonable and in the
10 best interest of the Class, as he voluntarily signed both the signed the settlement agreement. I
11 believe Plaintiff is capable of fairly representing and adequately protecting the interests of the
12 proposed Class Members. Plaintiff’s interests in this litigation are coextensive with the interests
13 of the proposed Settlement Class. The members of the proposed Settlement Class all worked for
14 Defendants during the relevant time period and incurred the same type of alleged damages with
15 regard to Defendant’s alleged violations of the law. Moreover, Plaintiff has agreed to serve as
16 Class Representative and has specifically acknowledged the duties required of class
17 representatives in writing. This demonstrates his commitment to bringing about the best possible
18 results for the benefit of the proposed Classes. Therefore, Plaintiff has and will continue to
19 adequately represent the proposed Class Members.

20 **VII. THE PROPOSED SETTLEMENT ADMINISTRATOR**

21 41. After seeking bids from three experienced and known class action settlement
22 administrators, Plaintiff’s counsel has chosen to propose Phoenix Class Action Administration
23 Solutions (“Phoenix”) to administer the proposed class action settlement. Phoenix provided a bid
24 of \$5,950 to administer this Settlement. Should the administration cost be less than \$5,850, the
25 difference will be distributed the Net Settlement Amount for distribution to participating Class
26 Members.

27 **VIII. EXHIBITS**

28 42. Attached to this declaration as Exhibit 1 is the Class Action Settlement in this

1 matter and the Class Notice Packet

2 43. Attached to this declaration as Exhibit 2 is the bid from Phoenix to administer the
3 settlement.

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5 Dated: November 5, 2021

ADVOCATES FOR WORKER RIGHTS LLP

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Joseph D. Sutton
Attorneys for Plaintiffs

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9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**
12

13 BENITO SEGURA, on behalf of himself and all
14 other persons similarly situated,

15 Plaintiff,

16 vs.

17 ALTIA TRANSPORTATION COMPANY,
18 THOMAS GASPARINI, and DOES 1-10,
inclusive,

19 Defendants.
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Case No. CGC-20-586926

**EXHIBITS TO DECLARATION OF
JOSEPH D. SUTTON IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS/PAGA
SETTLEMENT**

Date: December 2, 2021
Time: 11:00 a.m.
Department 304

Before the Honorable Anne-Christine Massullo

Exhibit 1

SETTLEMENT AGREEMENT

This Settlement Agreement (this “Settlement” or “Agreement”) is made by and between Benito Segura (“Plaintiff”) and Altia Transportation Corporation and Thomas Gasparini, (each a “Defendant” and collectively, “Defendants”). Plaintiff and Defendants collectively are referred to in this Agreement as the “Parties,” and each as a “Party.”

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- A. “Action” means the civil action titled *Segura v. Altia Transportation Corporation and Thomas Gasparini*, Case No. CGC-20-586926, pending in the San Francisco Superior Court (the “Court”).
- B. “Agreement” shall refer to this document.
- C. “Class Member” means the named Plaintiff in this Action and any non-exempt delivery drivers who work or have worked for Defendants within the State of California during the period four (4) years prior to the filing of the initial complaint in this action (September 16, 2016) through preliminary approval (also known as the “Class period”).
- D. “Class Counsel” means Marco A. Palau, Joseph D. Sutton and Eric S. Trabucco of Advocates for Worker Rights LLP.
- E. “Class Counsel Fees and Expenses Payment” means the amount awarded to Class Counsel by the Court to compensate them for their fees and litigation expenses in connection with the Action, including their pre-filing investigation, their commencement of the Action and all related litigation activities, this Settlement, and all post-Settlement compliance procedures.
- F. “Class Notice” means the court-approved Notice of Proposed Settlement, Conditional Certification of Settlement Class, Preliminary Approval of Settlement, and Hearing Date for Final Court Approval.
- G. “Class Notice Packet” means the Class Notice and the Individual Class Member Verification Form.
- H. “Class Representative Service Award” means the payment made, in addition to his respective settlement share, to Plaintiff in his capacity as Class Representative to compensate him for initiating and pursuing the Action, undertaking the risk of liability for attorneys’ fees and litigation costs in the event the Action was unsuccessful, and the reputational risks associated with filing a lawsuit against a former employer.
- I. “Defendants’ Counsel” means Brian Koegle, Caleb Miller, and Michael Fostakowsky of Poole Shaffery.
- J. “Effective Date” means: (a) if no Class Member files and serves any timely and valid objection to the Settlement, then the date upon which the Court grants Final

Approval of the Settlement; (b) if any Class Member files and serves a timely and valid objection but it is subsequently withdrawn, then the date upon which the Court grants Final Approval of the Settlement; or (c) if any Class Member files and serves a valid and timely objection, then the date which is sixty-five (65) days after (i) service of notice of entry of the Final Approval Order and Judgment on the Parties to the Action and all objectors to the Settlement, if any, without appeals or requests for review being taken, or (ii) order affirming the Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken

- K. "Employer Payroll Contributions" shall mean those payroll taxes and other monetary contributions required by state and federal law to be made by an employer on wage payments, including but not limited to FICA, Medicare, FUTA, and SUTA, and any federal and state unemployment taxes, payable with respect to amounts treated as wages under this Agreement.
- L. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to finally approve and implement the terms of this Agreement.
- M. "Individual Class Member Dispute Form" means the form in the Class Notice Packet that details the number of pay periods worked by each individual Class Member for the period from September 16, 2016 to preliminary approval.
- N. "Judgment" means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Superior Court.
- O. "Gross Settlement Amount" ("GSA") means the maximum amount to be paid by Defendants as provided by this Agreement, four-hundred and fifty thousand dollars (\$450,000.00), inclusive of employer-side payroll taxes for the portion of the settlement that is characterized as wages, Defendants' mediation costs of two-thousand dollars (\$2,000), and settlement administrator costs. In no event will Defendants be required to pay more than \$450,000. The settlement shall be non-reversionary.
- P. "Net Settlement Amount" means the Gross Settlement Amount, less (as approved by the Court) (1) the employer-side payroll taxes for the portion of the settlement that is characterized as wages; (2) Defendants' mediation costs of two-thousand dollars (\$2,000); (3) the Class Representative Service Award; (4) the Class Counsel Fees and Expenses Payment (which includes all attorneys' fees and expenses incurred to date and to be incurred in documenting the Settlement, securing court approval of the Settlement, attending to the administration of the Settlement, and obtaining dismissal of the Action); (5) the portion of the PAGA Payment allocated to the LWDA; and (6) the Settlement Administrator's reasonable fees and expenses incurred in administering the Settlement.
- Q. "PAGA Employees" means all persons classified by Defendants as non-exempt delivery drivers who work or have worked for Defendants within the State of California during the period one (1) year prior to Plaintiff giving the Labor Workforce and Development Agency and Defendants notice of the alleged Labor Code violations (December 3, 2020) through preliminary approval (also known as

the “PAGA period”).

- R. “PAGA Payment” means the payment made for civil penalties in the amount of \$10,000 to be paid to the California Labor and Workforce Development Agency (“LWDA”) and the Participating Class Members from the GSA to settle claims pursuant to the Private Attorneys General Act, Labor Code section 2698, *et seq.*
- S. “Participating Class Member” means each individual Class Member, as defined herein, who does not submit a valid and timely request to be excluded from the Settlement.
- T. “Preliminary Approval of the Settlement” means the Superior Court’s preliminary approval of the Settlement without material change, or with material changes to the Settlement to which the Parties agree.
- U. “Settlement” means the terms and conditions set forth in this Agreement meant to resolve the Action.
- V. “Settlement Administrator” means Phoenix Settlement Administrators (“Phoenix”) selected by parties to administer the Settlement.
- W. “Settlement Share” means the total gross amount each Participating Class Member will receive as their respective portion of the Net Settlement Amount.

II. RECITALS

- A. Plaintiff initially filed his class action complaint in San Francisco County Superior Court on September 16, 2020.
- B. On November 25, 2020, Defendants filed an Answer to the Complaint.
- C. On December 3, 2020, Plaintiff submitted his Private Attorney General Act (“PAGA”) Notice to California’s Labor and Workforce Development Agency (“LWDA”) and to Defendants. Following expiration of the administrative exhaustion period and pursuant to the parties’ stipulation, Plaintiff filed the operative First Amended Class and Representative Action Complaint (“FAC”) on June 29, 2021, adding a claim under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*
- D. In the FAC Plaintiff alleges claims for (1) failure to pay for all hours worked (Labor Code §§ 223, 226.2 and 1194, and Wage Order 9); (2) failure to pay overtime wages (Labor Code § 510 and Wage Order 9); (3) failure to provide paid rest breaks (Labor Code § 226.7 and Wage Order 9); (4) failure to provide meal periods (Labor Code §§ 226.7, 512 and Wage Order 9); (5) failure to furnish accurate itemized wage statements (Labor Code § 226); (6) failure to timely pay final wages at resignation/termination (Labor Code §§ 201, 202 and 203); (7) failure to reimburse necessary business expenses (Labor Code § 2802 and Wage Order 9); (8) failure to produce records in response to statutory request (Labor Code §§ 226 and 1198.5); (9) violation of the Unfair Competition Law (California Business & Professions Code §§ 17200, *et seq.*); and (10) civil penalties pursuant to the Private Attorneys General Act (“PAGA”) (Labor Code § 2699, *et seq.*) Defendants filed their responsive pleading on August 2, 2021.

- E. Shortly after Defendants filed their answer, the parties began discussing the potential for early mediation. Over the course of the first few months of 2021, the parties negotiated a mediation stipulation detailing the core wage and hour data and documents Defendants would need to produce in order for Plaintiff to engage in fully informed mediation. The stipulation covers comprehensive range of payroll, timekeeping, and class member contact information.
- F. On July 19, 2021, the Parties participated in a remotely conducted mediation with Justice Steven Vartabedian (ret.). Although a settlement was not reached on the day of the mediation, Justice Vartabedian made a mediator's proposal on August 4, 2021, which the parties' accepted.

Based on these Recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Defendants may be obligated to pay in connection with the Settlement of this Class & PAGA Action is four-hundred and fifty thousand dollars (\$450,000.00). This amount will cover (as approved by the Court): (1) all Settlement Shares paid to Participating Class Members; (2) the Class Representative Service Award; (3) the Class Counsel Fees and Expenses Payment; (4) the PAGA Payment; (5) the Settlement Administrator's fees and expenses; (6) Defendants' mediation costs (\$2,000); and (7) the employer-side payroll taxes for the portion of the settlement that is characterized as wages. Within thirty (30) days following the Effective Date, Defendants will transfer to the Claims Administrator the Gross Settlement Amount.
- B. **Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will allocate Settlement Shares from the Net Settlement Amount to Participating Class Members as follows:
 - 1. **Calculation.** A Participating Class Member's Settlement Share shall be calculated by multiplying the Net Settlement Amount by the ratio of (a) the number of pay periods worked by the Class Member for Defendants between September 16, 2016 through the date of preliminary approval (the "Class period"), and (b) the total number of pay periods worked by all Participating Class Members during the Class period.
 - 2. **Treatment.**
 - a. Sixty-six percent (66%) of each Settlement Share will be treated as a payment in settlement of the Participating Class Member's claims for statutory and civil penalties and interest. This sixty-six percent (66%) portion (the "Non-Wage Portion") will not be reduced by payroll tax withholdings and deductions. Instead the Settlement administrator will issue to the Participating Class Member an IRS Form 1099 when required with respect to the Non-Wage Portion.
 - b. Thirty-four percent (34%) of each Settlement Share (the "Wage

Portion”) will be treated as a payment in settlement of the Participating Class Member’s claims for unpaid wages. Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Settlement Administrator will issue to the Class Member an IRS Form W-2 with respect to the Wage Portion.

3. **Class Members Are Not Required to Submit a Claim Form to Receive a Share of the Settlement.** Class Notice Section F will provide the number of workweeks (based on Defendant’s records) and the approximate proportional share of the settlement payment attributed to any individual Class Member. If the Participating Class Member does not dispute the number of workweeks set forth in Section F of the Class Notice, then the Settlement Administrator will mail that Class Member’s shares of their individual settlement payment within the time frame specified in § III.A. The Individual Class Member Dispute Form only needs to be returned to the Settlement Administrator if the Participating Class Member disputes Defendant’s records as to the number of workweeks that individual worked from September 16, 2016 through the date of preliminary approval. Should a current or former employee of Defendant claim that they have been improperly excluded from the Class, they must contact the Settlement Administrator within 60 calendar days after the Settlement Administrator mails the Class Notice Packet and provide documentation that they worked for Defendant at some point during the Class Period and have not already resolved the claims asserted in the Action, whether by settlement or adjudication. Defendant’s records will be controlling when it comes to determining whether a current or former employee was improperly excluded from the Class.
4. Class Members will be provided with an individual Class Member Verification Form with the Class Notice that states the total number of pay periods attributed to that Class Member per Defendants’ records. If a Class Member does not dispute the number of pay periods he worked outlined in the Class Member Verification Form by notifying the Settlement Administrator in writing by either FAX or mail postmarked no later than the time frame specified in the Class Member Verification Form, the Settlement administrator will mail to that Class Member their *pro rata* share of the Settlement thirty-five (35) days after the Effective Date.
5. **Effect of Class Members Who Request to Be Excluded from the Settlement.** A Class Member who elects not to participate in the Settlement will not share in any Settlement proceeds or be bound by the Settlement; that Class Member’s pay period worked will not be included in the calculations of Settlement Shares for those Class Members who do not request exclusion; and the Settlement Share that otherwise would have been payable to such Class Member will be retained in the Net Settlement Amount for distribution to all other Participating Class Members who do not request to be excluded from the Settlement.

C. Payments to Plaintiff, Class Counsel, and Settlement Administrator. Subject

to the terms and conditions of this Agreement and the Court's approval, the Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **To Plaintiff:** In addition his Settlement Share, Plaintiff Benito Segura will apply to the Court for a service award of up to \$15,000 in consideration for initiating and pursuing the Action, undertaking the risk of liability for attorneys' fees, expenses and litigation costs in the event that the Action was unsuccessful, and the reputational risk associated with suing a former employer. Defendants will not oppose Plaintiff's request for a Class Representative Service Award of up to \$15,000.00. The Settlement Administrator will pay the Class Representative Service Award approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Service Award of less than \$15,000.00, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Tax deductions and withholdings will not be taken from the Class Representative Service Payment, and instead a Form 1099 will be issued to Plaintiff with respect to this payment.
 2. **To Class Counsel:** Class Counsel will apply to the Court for an award of attorneys' fees of not more than thirty-three and 1/3 percent (33 & 1/3%) of the Gross Settlement Amount, or one-hundred and fifty thousand dollars (\$150,000.00), and (b) litigation costs not to exceed \$10,000.00 incurred in this action by Class Counsel. Defendants will not oppose Class Counsel's request for a Class Counsel Fees and Expenses Payment of these amounts. If the Superior Court approves an attorneys' fees and costs award of less than \$150,000.00, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. The Settlement Administrator will pay the amount approved by the Court out of the Gross Settlement Amount. Tax deductions and withholdings will not be taken from the Class Counsel Fees and Expenses Payment, and instead a Form 1099 will be issued to Class Counsel.
 3. **To the Settlement Administrator.** The Settlement Administrator will pay itself out of the Gross Settlement Amount its reasonable fees and expenses as approved by the Court, not to exceed \$5,950.00.
- D. **PAGA Payment.** Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount is allocated to settle claims for civil penalties under Private Attorneys General Act, Cal. Lab. Code section 2698, *et seq.* Seventy-five percent (75%) of the PAGA Payment (\$7,500) shall be paid to the California Labor and Workforce Development Agency ("LWDA") as required by PAGA. The \$2,500 remainder of the PAGA Payment shall be distributed to the PAGA Employees based on their comparatively number of pay periods worked during the PAGA period (December 3, 2020 through preliminary approval).
- E. **The Settlement Administrator.** The Parties will ask the Superior Court to approve a the parties' chosen Settlement Administrator, Phoenix, which, as a

condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, printing, and mailing to all Class Members the Class Notice Packet; translating the Class Notice Packet from English to Spanish; conducting a National Change of Address search and using Accurint and other reasonable and cost-effective skip trace methods to locate any Class Member whose Class Notice Packet was returned by the U.S. Postal Service as non-deliverable, and re-mailing the Class Notice Packet to the Class Member's new address; setting up a toll-free telephone number to field calls from Class Members; receiving requests for exclusion in Settlement; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of requests for exclusions; calculating Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Class Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice Packet, will be paid out of the Gross Settlement Amount.

F. Procedure for Approving Settlement.

1. Motion for Preliminary Approval.

- a. The Parties jointly will file a motion (the "Motion for Preliminary Approval") with the Court for an order granting Preliminary Approval of the Settlement, conditionally certifying the Settlement Class, setting a date for the Final Approval Hearing, appointing Plaintiff as Class Representatives and his counsel of record in the Action as Class Counsel, and approving the Class Notice.
- b. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion.
- c. Should the Court decline to preliminarily approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Settlement will be null and void and the Parties will have no further obligations under it.

2. Notice to Class Members. After the Court enters its order granting Preliminary Approval of the Settlement, every Class Member will be provided with the Class Notice Packet, which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and an Individual Class Member Verification Form stating the total number of pay periods attributed to that Class Member by Defendants' records.

- a. Within 7 days after the Court enters its order granting Preliminary Approval of the Settlement, Defendants will provide to the Settlement

Administrator with Class Member Data, preferably in electronic form for the Class Members containing, for each Class Member, the Class Member's name, employee identification number, last known address, and Social Security number, the end date for each Class Member's employment, and the number of pay periods worked by the Class Member for Defendants during the Class Period. If any or all of the Class Members' Data are unavailable to Defendants, Defendants will use best efforts to deduce or reconstruct the Class Members' Data prior to when it must be submitted to the Settlement Administrator. At the time Defendants transmits the Class Member Data to the Settlement Administrator, it shall also provide to Class Counsel a signed verification confirming the accuracy of the number of Class Members.

- b. Within 7 days after receiving the Class Members' Data, the Settlement Administrator will mail the Class Notice Packets to all identified Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendants unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.
- c. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than 7 days from receipt of the returned packet, search for a more current address for the Class Member using Accurint and other reasonable and cost-effective skip trace methods, and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will use the Class Members' Data and otherwise work with Defendants to find a more current address. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Defendants' Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties. Class Counsel and Defendants' Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.
- d. Each week, the Settlement Administrator will provide to Class Counsel and Defendants' Counsel a report showing whether any Class

Notice Packets have been returned and re-mailed and the receipt of any requests for exclusion.

- e. Not later than sixteen (16) calendar days prior to the Final Approval Hearing, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement; Disputing the Number of Workweeks; Requests for Exclusion.

- a. **Objection to Settlement.** A Class Member who wishes to object to any term of the Settlement must send the objection to the Settlement Administrator by either email, FAX or mail postmarked no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice setting forth the grounds for the objection, the full name, address, and telephone number of the objector, date, and signature. The Settlement Administrator will forward any objections received to the lawyers for Plaintiff and Defendant. Absent good cause found by the Court, objections will be waived or not considered if not timely or otherwise compliant. Class Counsel and Defendant's counsel will file a response to any objection within 7 calendar days before the Final Approval Hearing. The parties will provide the Court with a complete and accurate list of all Class Members who object to the Settlement, along with their objections in the final approval motion.
- b. **Individual Class Member Dispute Form.** A Class Member who wishes to dispute the number of workweeks she or he worked outlined in the Class Member Dispute Form sent to the Class Member as part of the Class Notice Packet, may do so by submitting the Class Member Dispute Form, including any supporting documents (such as paycheck stubs or tax returns) to the Settlement Administrator by either email, FAX or mail postmarked no later than sixty (60) calendar days after the Settlement Administrator mails the Class Member Dispute Form. The Settlement Administrator will make the final determination as to the correct number of compensable workweeks for such a Class Member and will inform the Class Member regarding the final determination of their total number of workweeks. The parties will provide the Court with a complete and accurate list of all Class Members who disputed their workweeks in the final approval motion.
- c. **Requests for Exclusion.** A Class Member who wishes to be excluded from the Settlement must mail, email, or fax the Settlement Administrator a written and signed request for exclusion no later than sixty (60) calendar days after the Settlement Administrator mails the Class Notice Packet. The request must contain the name (printed

legibly), address, telephone number, and last four digits of the Class Member's social security number or their tax identification number. If a question is raised about the authenticity of any request for exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Class Member who submits a timely request for exclusion will not participate in or be bound by the Settlement and the Judgment and will not receive a Settlement Share, but will retain the right, if any, he or she may have to pursue a claim against Defendant. Class Members who submit a Request for Exclusion that fails to include the aforementioned identifying information will be contacted by the Settlement Administrator so that they may correct their request if they wish to be excluded and shall have 14 days from notice by the Class Administrator to cure any defects. Class Members who do not submit a timely request for exclusion in the manner and by the deadline specified in the Class Notice will automatically be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Superior Court, and by the Judgment, regardless of whether they have objected to the Settlement. Class Members who exclude themselves from the Settlement will lose standing to object to the Settlement. If the Settlement Administrator receives both an objection and an exclusion request from the same Class Member, the Settlement Administrator will exclude the Class Member from the Settlement. The parties will provide the Court with a complete and accurate list of all Class Members who submitted a timely and complete Request for Exclusion in the final approval motion.

- d. **Report.** Not later than five business (5) days after the deadline to contest the Class Member Dispute Form and request to be excluded from the Settlement, the Settlement Administrator will provide counsel for Defendant with a complete and accurate list of all Class Members who have contested the information on their Class Member Dispute Form or requested to be excluded from the Settlement. The Settlement Administrator will provide Class Counsel with the same information by employee identification number only, without disclosing the Class Members' names and other personally identifying information.
4. **No Solicitation of Objection, Appeal, or Election Not to Participate in Settlement.** Neither Party nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement.
 5. **Additional Briefing and Final Approval.**
 - a. Not later than sixteen (16) court days before the Final Approval Hearing, Plaintiff will file with the Superior Court a motion for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees and expenses, the Class

Representative Service Award, the PAGA Payment, and the Class Counsel Fees and Expenses Payment pursuant to this Settlement.

- b. If the Superior Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement to which the Parties do not agree, then either Party will have the right to void the Settlement; if that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, except that Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the right to void the Settlement under this paragraph. However, an award by the Superior Court of a lesser amount than that sought by Plaintiff and Class Counsel for the Class Representative Service Award or the Class Counsel Fees and Expenses Payment will not constitute a material change to the Settlement within the meaning of this paragraph.
 - c. Upon final approval of the Settlement by the Superior Court, the Parties will present to the Superior Court an Order for its approval and entry of Judgment. After entry of the Judgment, the Superior Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of (1) enforcing this Agreement, (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under court rules or applicable law.
6. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the material terms of this Agreement, Plaintiff, Class Members who did not timely submit an objection to the Settlement, Defendant, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiff or Class Counsel from appealing from a refusal by the Superior Court to award the full Class Representative Payments or the Class Counsel Fees and Expenses Payment sought by them, but not the approval of the Settlement otherwise. If an appeal is taken from the Judgment, the time for consummating the Settlement (including making payments to Class Members under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final, as defined in this Agreement.
7. **Vacation, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for certiorari, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to

the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Superior Court not later than 30 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Superior Court's award of the Class Representative Service Award or the Class Counsel Fees and Expenses Payment will not constitute a vacating, reversal, or material modification of the Judgment within the meaning of this paragraph.

8. **Uncashed Settlement Share Checks.** A Class Member must cash his or her Settlement Share checks within 180 calendar days after it is mailed to him or her. If a check mailed to a Class Member as part of the first of the two settlement payments is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Member at his or her correct address. However, if the Settlement Administrator is unable to locate the Class Member's correct address or the first settlement payment is returned as undeliverable to the Settlement Administrator for a second time, then the Settlement Administrator will reallocate those funds on a *pro rata* basis to Class Members for whom there are correct addresses for the second installment of settlement payments. If any Class Member's first Settlement Share check is not cashed within 120 days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. If any Class Member's first settlement check remains uncashed after 180 days, those funds will be reallocated during the second disbursement of settlement shares on a *pro rata* basis to Class Members who cashed their first settlement checks. If any Class Member's second Settlement Share check is not cashed within 120 days after its last mailing to the Class Member, the Settlement Administrator will send the Class Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable, and offering to replace the check if it was lost or misplaced but not cashed. If one or more Class Members fail to cash their second Settlement Share check within 180 days after it is mailed to their last known address, and if the aggregate funds represented by the uncashed checks total \$5,000.00 or more, they will be distributed to each Class Member who is participating in the Settlement and cashed their first Settlement Share check in the same *pro rata* manner as the first settlement share checks. If the aggregate funds represented by uncashed second checks total less than \$5,000.00, they will be donated to Centro Legal de la Raza.

G. Release and Waiver of Claims.

1. **Plaintiff.** In consideration of his *pro rata* share of the Settlement and the other terms and conditions of the Settlement, Plaintiff releases any and all claims against Released Parties, including but not limited to those raised and those that could have been raised in the Action; those released by Class Members as set forth below; and those arising from or related to his employment with Defendant (the “Plaintiff’s Released Claims”). Plaintiff’s Released Claims include all claims, whether known or unknown. Thus, even if Plaintiff discovers facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of her Released Claims, those claims will remain released and forever barred. Therefore, because Plaintiff is granting a general release, he expressly waives and relinquishes the provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

2. **Class Members.** In consideration of the Settlement, each Class Member who does not timely request to be excluded from the Settlement releases any and all claims against Released Parties based on the facts that were alleged in Plaintiff’s First Amended Complaint, or could have been alleged, in the Action or otherwise based on or related to the allegations that that Defendant or any of the Released Parties failed to pay all wages due, including minimum and overtime premium wages; failed to provide compliant rest breaks and meal periods; failed to pay all final wages upon termination; and failed to render accurate wage statements, for the period from September 16, 2016 through preliminary approval. Such claims include, but are not limited to, claims under Labor Code sections 223, 226.2, 1194, 510, 226.7, 512, 226, 201, 202, 203, 2802, 1198.5, 2699 *et seq.*, Business & Professions Code §§ 17200, *et seq.*

H. Miscellaneous Terms.

1. **References.** Defendants agrees to provide Plaintiff a neutral reference. If contacted by a third party for an employment reference about Plaintiff, Defendants will provide only the dates of Plaintiff’s employment, positions, and most recent wage rate(s).
2. **Non-Disparagement.** Plaintiff agrees that he will not make or publish any defamatory or disparaging communication about Defendants, any of Defendants’ officers, any of Defendants’ employees, or any Releasee. Plaintiff agrees not to disparage, derogate, or discuss by innuendo or otherwise, verbally or in writing, in any manner likely to be harmful to Defendants or its business, including on or in any social media forum; provided, however, that Plaintiff may respond accurately and fully to any

request for information to the extent required by legal process. Defendants agree to instruct any employee informed of this settlement agreement, that they are not to make or publish any defamatory communication about Plaintiff including with respect to Plaintiff business or personal reputation, including on or in any social media forum, and will not disparage, derogate, or discuss by innuendo or otherwise, verbally or in writing, in any manner likely to be harmful to Plaintiff; provided, however, that each may respond accurately and fully to any request for information to the extent required by legal process.

3. **Privacy.** Neither Plaintiff nor Class Counsel shall issue any press release or announcement of any kind related in any way to the Settlement, and the Settlement shall not be advertised or mentioned on any website owned directly or indirectly by Class Counsel, including Class Counsel's personal or firm website, except that Class Counsel may post notice of the settlement, including the class notice packet and related documents on their website following preliminary approval, which information shall be removed from Class Counsel's website within 10 days of the class member payments being distributed by the Claims Administrator.
4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this or other than the representations, warranties, covenants, and inducements expressly stated in this Agreement.
5. **Attorney Authorization.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Superior Court, and in all cases all such documents, supplemental provisions and assistance of the Superior Court will be consistent with this Agreement.
6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

8. **Applicable Law.** All terms and conditions of this Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
9. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
10. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's length negotiations, taking into account all relevant factors, current and potential. In addition, Mediator John Bates may, at his discretion, execute a declaration supporting the Settlement and the reasonableness of this Settlement, and the Superior Court may, in its discretion, contact Mr. Bates to discuss the Settlement and whether or not the Settlement is fair and reasonable.
11. **No Admission of Liability.** By entering into this agreement, Defendants are not admitting any liability. Defendants are agreeing to stipulate to certification of a class for settlement purposes only. If the settlement is not finally approved, the Parties agree that they will revert to their positions in the lawsuit prior to the time the settlement was reached, and no agreements set forth in the parties' memorandum of understanding, the final stipulation of settlement, or any documents generated or orders issued related to the settlement will be admissible in any future proceeding in this or any other action.
12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
13. **Severability.** Before declaring any provision of this Settlement invalid, the Parties request that the Superior Court first attempt to construe the provisions valid to the fullest extent possible under applicable precedents. In the event any provision of this Settlement shall be found invalid, void or unenforceable, that provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected
14. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

Marco A. Palau
Joseph D. Sutton
Eric S. Trabucco
Advocates for Worker Rights LLP

Brian Koegle
Caleb Miller
Michael Fostakowsky
Poole Shaffery

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Santa Clarita, CA 91355
Tel: 661-290-2991

15. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL


The Parties hereby execute this Agreement.

Dated: 11/5/2021



Altia Transportation Company.

Dated: 11/5/2021



Thomas Gasparini

Dated: _____

Benito Segura

212 9th Street, Suite 314
Oakland, CA 94607
Tel: 510-269-4200

25350 Magic Mountain Parkway, 2nd Fl.
Santa Clarita, CA 91355
Tel: 661-290-2991

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IV. EXECUTION BY PARTIES AND COUNSEL

The Parties hereby execute this Agreement.

Dated: _____

Altia Transportation Company.

Dated: _____

Thomas Gasparini

Dated: 11/05/2021



Benito Segura

Exhibit 2



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	89
Opt Out Rate	2%
Opt Outs Received	2
Total Class Claimants	87
Subtotal Admin Only	\$5,950.00

WILL NOT EXCEED	\$5,950.00
For 89 Class Members	

November 5, 2021

Case: ALTIA TRANSPORTATION Opt-Out Administration wLanguage

Phoenix Contact: Jodey Lawrence
 Contact Number: 949.566.1455
 Email: Jodey@phoenixclassaction.com

Requesting Attorney: Joseph D. Sutton
 Firm: Advocates for Worker Rights LLP
 Contact Number: (510) 283-0387
 Email: jds@advocatesforworkers.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.
 Estimate is based on 89 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)				
Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$125.00	1		\$125.00
Programming Database & Setup	\$125.00	1		\$125.00
Toll Free Setup*	\$153.31	1		\$153.31
Call Center & Long Distance	\$1.95	9		\$17.36
NCOA (USPS)	\$20.00	1		\$20.00
Total				\$440.67

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Website				
Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.15	89		\$13.35
Notice Packet & Opt-Out Form	\$1.50	89		\$133.50
Language Translation	\$1,200.00	1		\$1,200.00
Total				\$1,546.85

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$1.00	18	\$17.80
Remail Notice Packets	\$1.50	18	\$26.70
Estimated Postage	\$0.70	18	\$12.46
Programming Undeliverables	\$50.00	1	\$50.00
		Total	\$216.96

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$150.00	1	\$150.00
Non Opt-Out Processing	\$150.00	1	\$150.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$8.50	2	\$8.50
Case Manager	\$85.00	2	\$170.00
		Total	\$588.50

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	2	\$200.00
Disbursement Review	\$100.00	2	\$200.00
Programming Manager	\$95.00	3	\$285.00
QSF Bank Account & EIN	\$100.00	3	\$300.00
Check Run Setup & Printing	\$100.00	1	\$100.00
Mail Class Checks, W2 and 1099 *	\$1.50	87	\$130.83
Estimated Postage Checks, W2 and 1099	\$0.56	87	\$48.84
		Total	\$1,264.67

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	2	\$230.00
Remail Undeliverable Checks (Postage Included)	\$1.99	9	\$17.36
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	1	\$115.00
QSF Tax Filing	\$100.00	3	\$300.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$550.00	1	\$550.00
		Total	\$1,892.36

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$5,950.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

1 **ADVOCATES FOR WORKER RIGHTS LLP**

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2 marco@advocatesforworkers.com

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212 9th Street, Suite 314

5 Oakland, California 94607

Telephone: (510) 269-4200

6 Facsimile: (408) 657-4684

7 Attorneys for Plaintiff BENITO SEGURA

8

9

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

11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

12

13 BENITO SEGURA, on behalf of himself and all
14 other persons similarly situated,

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Plaintiff,

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vs.

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18 ALTIA TRANSPORTATION COMPANY,
THOMAS GASPARINI, and DOES 1-10,
inclusive,

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Defendants.

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Case No. CGC-20-586926

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS/PAGA
SETTLEMENT**

Date: December 2, 2021

Time: 11:00 a.m.

Department 304

Before the Honorable Anne-Christine Massullo

1 Plaintiff's unopposed Motion for Preliminary Approval of Class Settlement came on for
2 hearing on _____, 2021 at 8:30 a.m. in Department 304 of this honorable Court. Having
3 read and considered the moving papers, the Declaration of Joseph D. Sutton filed in support
4 thereof and the exhibits attached thereto, including the Settlement Agreement, proposed Class
5 Notice Packet, the Settlement Administrator bid and information packet, the parties supplemental
6 briefing, and having heard all argument by counsel presented at the hearing, and good cause
7 appearing, the Court finds and orders as follows:

8 1. Plaintiff Benito Segura and Defendants Altia Transportation Company and Thomas
9 Gasparini through their respective counsel of record, have reached an agreement to settle all claims
10 in this class action, which alleges violations of the California Labor Code and California's Private
11 Attorney General Act ("PAGA"), Labor Code sections 2698 *et seq.* See Settlement (hereinafter
12 "Settlement Agreement" or "Settlement"), Ex. 1 to the Declaration of Joseph D. Sutton ("Supp.
13 Sutton Decl.").

14 2. The Court has reviewed the terms of the proposed Settlement Agreement, as well as
15 the Declaration of Joseph D. Sutton, which sets out in detail the litigation, the informal discovery
16 exchanged, and mediation efforts undertaken by both parties that paved the way for this Settlement.
17 Based upon this Court's review of the Settlement Agreement, the Notice and Motion for Approval
18 of Class Settlement, the Memorandum of Points and Authorities in Support Thereof, the
19 Supplemental Declaration of Joseph D. Sutton in support of the Motion and the exhibits attached
20 thereto, as well as the entire record in this matter, the Court finds that the Settlement appears to be
21 fair, adequate, and reasonable to the Class, falls within the range of possible judicial approval.

22 3. The Court confirms that the notice procedure presented by the Settlement
23 Agreement constitutes the best notice practicable, while also providing, within the relevant notice
24 documents, all information required to protect the due process interests of the Class. The proposed
25 notice procedure is the best practicable in that the Class Notice will be issued to the Class via United
26 States Postal Service First Class Mail for whom valid mailing addresses are available and will also
27 be made available on the Settlement Website. In addition, the Settlement Administrator will take
28 the necessary steps to resend the Class Notice in certain situations to ensure that the notice reaches

1 as many of the Class Members as is practical. The Court further finds that the proposed notice
2 procedure appropriately provides notice to the Class of the terms of the Settlement Agreement and
3 the options facing the Class including, but not limited to: exclusion from the Settlement;
4 representation by counsel of their choosing; to remain a member of the Class and automatically
5 receive payment if the Settlement Administrator has their valid mailing address; and/or objecting
6 to the terms of the Settlement.

7 Therefore, good cause appearing, **IT IS HEREBY ORDERED** that:

8 4. The Court preliminarily approves the Class Action Settlement Agreement;

9 5. The Court grants conditional certification for settlement purposes only of the
10 following Class for settlement purposes only, pursuant to Code of Civil Procedure section 382:

11 Any non-exempt delivery drivers who work or have worked for Defendants within
12 the State of California during the period four (4) years prior to the filing of the initial
13 complaint in this action (September 16, 2016) through preliminary approval.

14 6. The Court Appoints Marco A. Palau, Joseph D. Sutton, and Eric S. Trabucco of
15 Advocates for Worker Rights LLP as Class Counsel for the Class;

16 7. The Court appoints Plaintiff Benito Segura as the Class Representative for the Class;

17 8. The Court approves, as to form and content, the revised Class Notice packet,
18 including the Request for Exclusion/Opt-Out Form, and the Individual Class Member Dispute
19 Form; the procedure for providing notice to the Class; and the procedure for Class members to
20 object to, or request exclusion from, the Settlement. In implementing the proposed notice procedure,
21 the Parties may make any necessary changes to these documents provided those changes are
22 consistent with this Order;

23 9. The Court will not rule on the proposed attorneys' fees and costs or the proposed
24 Class Representative service award at this time; rather, it will consider whether to approve that
25 request based on its review of a separate noticed motion to be filed by Plaintiff prior to the final
26 approval hearing;

27 10. The Court hereby approves of the parties' selection of Phoenix Class Action
28 Administration Solutions as the Settlement Administrator and directs the Settlement Administrator

1 to perform all tasks related to administration and distribution of this Settlement. The proposed
2 Settlement Administrator, Phoenix Class Action Administration Solutions, provided a bid not to
3 exceed \$5,950 to administer this Settlement. Should the administration cost be less than \$5,950, the
4 difference will be distributed to the Class on a *pro rata* basis;

5 11. The Settlement Administrator is further ordered to provide the approved Class
6 Notice in accordance with the schedule below (to the extent any discrepancies between these items
7 and the Settlement exist, the terms of this Order shall control):

8 a. Within seven (7) business days after entry by the Court of its Order Granting
9 Preliminary Approval, Defendants shall provide the Settlement Administrator with Class Member
10 Data, preferably in electronic form, containing, for each Class Member, the Class Member's name,
11 employee identification number, last known address, and Social Security number, the end date for
12 each Class Member's employment, and the number of workweeks worked by the Class Member
13 for Defendants;

14 b. Within seven business (7) days of receipt of the Database from Defendant,
15 the Settlement Administrator will mail the Class Notice Packets to all identified Class Members via
16 first-class regular U.S. Mail using the mailing address information provided by Defendant, unless
17 modified by any updated address information that the Settlement Administrator obtains in the
18 course of administration of the Settlement.;

19 c. Within seven (7) business days from the date of receipt of a Class Notice
20 Packet that is returned because of an incorrect address, the Settlement Administrator will search for
21 a more current address for the Class Member using Accurint and other reasonable and cost-effective
22 skip trace methods, and re-mail the Class Notice Packet to the Class Member along with a Notice
23 of Re-mailing;

24 d. Within sixty (60) days from the date the Settlement Administrator sends the
25 Class Notice Packet, a Class Member who wishes to opt-out of the Settlement must submit a request
26 for exclusion to the Settlement Administrator; The parties will provide the Court with a complete
27 and accurate list of all Class Members who submitted a timely and complete Request for Exclusion
28 in the final approval motion;

1 e. Within sixty (60) days from the date the Settlement Administrator sends the
2 Class Notice Packet, a Class Member who wishes to object to any term of the Settlement must
3 submit a written objection to the Settlement Administrator setting forth the grounds for the
4 objection, the full name, address, and telephone number of the objector, date, and signature. Class
5 Counsel and Defendant's counsel will file a response to any objection no later than 7 calendar days
6 prior to the Motion for Final Approval Hearing. The Settlement Administrator will forward any
7 objections received to the lawyers for Plaintiff and Defendant. The parties will provide the Court
8 with a complete and accurate list of all Class Members who object to the Settlement, along with
9 their objections in the final approval motion. Absent good cause found by the Court, objections will
10 be waived or not considered if not timely or otherwise compliant. Class Counsel and Defendant's
11 counsel will file a response to any objection within 7 calendar days before the Final Approval
12 Hearing;

13 f. A Class Member who wishes to dispute the number of workweeks she or he
14 worked outlined in the Class Member Dispute Form sent to the Class Member as part of the Class
15 Notice Packet, may do so by notifying the Settlement Administrator in writing by either email, FAX
16 or mail postmarked no later than sixty (60) days from the date the Settlement Administrator sends
17 the Class Notice Packet. The Settlement Administrator will make the final determination as to the
18 correct number of compensable workweeks for such a Class Member and notify them of the
19 decision;

20 g. Within thirty (30) days following the Effective Date, Defendants will
21 transfer to the Claims Administrator the Gross Settlement Amount. The Settlement Administrator
22 will then pay Plaintiff's Class Representative Service Award, Class Counsel's litigation costs and
23 fees, Class Members' settlement shares, and the LWDA within five (5) days of receiving the gross
24 settlement amount;

25 h. If a Class Member fails to cash their Settlement check within one-hundred
26 and eighty (180) days after the Settlement Share Checks are mailed, those funds will be reallocated
27 during the second disbursement of settlement shares on a pro rata basis to Class Members who
28 cashed their first settlement checks.

