

FILED
Superior Court of California
County of Los Angeles

APR 27 2021

Sherri R. Carter, Executive Officer/Clerk
By Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

1957cv30808

DIANNE SEARLES, an individual on
behalf of herself, and on behalf of all others
similarly situated,

Case No.: ~~19STCV41496~~

Plaintiff,

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITION

vs.

ROBERT HEATH TRUCKING, INC., a
corporation; and DOES 1 through 50,
inclusive,

Date: April 12, 2021
Dept.: SSC-7
Time: 11:00 a.m.

Defendants.

I. BACKGROUND

This is a wage and hour class action. Defendant operates a long haul refrigerated trucking operation servicing the central and western half of the United States and Generally, Defendant ships California-grown produce throughout the Southwestern United States.

1 On August 30, 2019, Plaintiff filed his wage and hour class action alleging the
2 following seven causes of action against Defendant: (1) violations of the Unfair
3 Competition Law (“UCL”) arising under the Business and Professions Code Section
4 17200 et seq., (2) failure to pay minimum wages in violation of Labor Code Sections
5 1194, 1197 and 1197.1, (3) failure to provide required meal periods in violation of Labor
6 Code Sections 226.7 and 512, (4) failure to provide required rest periods in violation of
7 Labor Code Sections 226.7 and 512, (5) failure to provide accurate itemized wage
8 statements 226, (6) failure to timely pay wages in violation of Labor Code Section 203,
9 and (7) failure to reimburse mandatory business expenses. Subsequently, Plaintiff filed a
10 First Amended Complaint adding an eight cause of action for civil penalties pursuant to
11 the Private Attorney General Act, Labor Code Sections 2698 et seq. (“PAGA”), for the
12 alleged violations of the California Labor Code.

13 Counsel represents that prior to mediation, the parties engaged in investigation
14 and informal discovery which included Defendant’s production of Plaintiff’s employee
15 file, time and payroll data for a 15% sample of the Settlement Class Members, pertinent
16 data points related to the Settlement Class Members, including but not limited to, the total
17 number of current and former Settlement Class Members and PAGA Group members,
18 the aggregate number of workweeks worked by the Settlement Class Members in the
19 Class Period and, the total number of pay periods worked by the PAGA Group members
20 in the PAGA Period.

21 On March 6, 2020, the Parties participated in an unsuccessful full-day mediation
22 with (Ret.) Hon. William Cahill. Thereafter, despite a delay caused by the COVID-19
23 pandemic, in October 2020, the parties were ultimately able to resolve the action with the
24 continued assistance of (Ret.) Judge Cahill. A fully executed Amended Settlement
25

1 Agreement is attached to the April 26, 2021 Declaration of Jean-Claude Lapuyade
2 (“Lapuyade Decl.”) as Exhibit A.

3 On February 5, 2021, the Court issued a checklist of items for the parties to address
4 and continued preliminary approval. In response, on February 25, 2021 counsel filed the
5 Supplemental Declaration of Jean-Claude Lapuyade (“Lapuyade Supp. Decl.”) with an
6 Amended Notice attached as Exhibit A thereto.

7 Now before the Court is Plaintiff’s motion for preliminary approval of the
8 settlement. On April 6, 2021, the Court issued a tentative ruling granting approval for
9 the settlement contingent on 1) counsel extending the check cashing deadline to 180 days;
10 2) Plaintiff providing a Declaration disclosing any interest in the cy pres (or lack thereof);
11 and 3) Counsel disclosing how Notice of Final Judgment will be provided to the Class.
12 The parties have now satisfied all of these conditions and so the Court grants approval.

13 **II. THE TERMS OF THE SETTLEMENT**

14 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

15 “Settlement Class Members” or “Settlement Class” means all individuals who are
16 or previously were employed by Defendant in California as a truck driver and were paid
17 by a piece-rate by the mile during the Class Period. (Settlement Agreement, ¶I.HH.)

18 “Class Period” and “Covered Period” means the period from August 30, 2015 to
19 September 1, 2020. (¶I.F)

20 “PAGA Group” means and all individuals who are or previously were employed
21 by Defendant in California as a truck driver and were paid by a piece-rate by the mile
22 during the PAGA Period. (¶I.U)

23 “PAGA Period” means the period from September 3, 2018 to September 1, 2020.
24 ¶I.V)
25

1 The estimated number of class members is 101 including Plaintiff. (¶I.HH)

2 The estimated number of workweeks for the class period through September 1,
3 2020 is 5,524. (¶I.II) The Parties negotiated the Gross Settlement Amount based on an
4 estimated 5,524 Workweeks. If, for any reason, at the time of preliminary approval, the
5 number of Workweeks for the Class Period increases more than 8% from this estimate to
6 5,966 Workweeks, (5,534 x 8%), then the Gross Settlement Amount shall increase
7 commensurate with the increased number of Workweeks above 5,966 at \$44.35 per
8 Workweek. (¶II.A.3)

9 The Parties stipulate and agree to the conditional certification of this Action for
10 purposes of this Settlement only. (¶II.G)

11 B. THE MONETARY TERMS OF SETTLEMENT

12 The essential monetary terms are as follows:

13 The Gross Settlement Amount (“GSA”) is \$245,000. (¶I.M). This includes payment
14 of a PAGA penalty of \$10,000 to be paid 75% to the LWDA (\$7,500) and 25% to the
15 Aggrieved Employees (\$2,500) (¶¶I.P; I.Q, I.W; Notice, pg. 4, ¶7.);

16 The Net Settlement Amount (“Net”) (\$133,333.34) is the GSA less¹:

- 17 • Up to **\$81,666.66** (1/3) for attorney’s fees (¶II.M.3);
 - 18 ○ **Fee Split:** 70% to JCL, and 30% to BNBD. (Declaration of Dianne
19 Searles (“Searles Decl.”), ¶4.)
- 20 • Incurred costs and expenses² (¶II.M.3);

22 ¹ The net will also be reduced by counsel’s requested costs.

23 ² The Court notes that the settlement does not provide for a cap on the costs requested, and the notice states that the
24 fees sought are \$81,585. (See Notice, pg. 4, ¶7.) The maximums disclosed to the Class within the Notice will be the
25 maximums Counsel is eligible to receive.

- 1 • Up to **\$10,000** for a service award to the class representative (§II.M.2); and
- 2 • Estimated **\$10,000** for class administration costs (§II.M.5); and
- 3 • **\$10,000** allocated to the PAGA Settlement. (§I.W)

- 4 • Defendant will be separately responsible for Defendant's share of employer
- 5 payroll taxes. (§II.A.1)

- 6 • Assuming the Court approves all maximum requested deductions (and without
- 7 applying deduction of counsel's costs), approximately \$133,333.34 will be
- 8 available for automatic distribution to participating class members. Assuming full
- 9 participation, the average settlement share will be approximately \$1,320.13.
- 10 (\$133,333.34 Net ÷ 101 class members = \$1,320.13). In addition, each class
- 11 member will receive a portion of the PAGA penalty, estimated to be \$24.75 per
- 12 class member. (\$2,500 (25% of \$10,000 PAGA penalty) ÷ 101 class members =
- 13 \$24.75)

- 14 • There is no Claim Requirement (§I.HH).
- 15 • The settlement is not reversionary (§III.A.4).
- 16 • Individual Settlement Payments shall be paid from the Net Settlement Amount
- 17 and shall be paid as follows: (§II.M.1)

- 18 ○ Individual Settlement Payments: Using the Class Data, the Settlement
- 19 Administrator shall add up the total number of Workweeks for all
- 20 Settlement Class Members. The respective Workweeks for each
- 21 Settlement Class Member will be divided by the total Workweeks for all
- 22 Settlement Class Members, resulting in the Payment Ratio for each
- 23 Settlement Class Member. Each Settlement Class Member's Payment

1 Ratio will then be multiplied by the Net Settlement Amount to calculate
2 each Settlement Class Member's estimated Individual Settlement
3 Payments. Each Individual Settlement Payment will be reduced by any
4 legally mandated employee tax withholdings (e.g., employee payroll
5 taxes, etc.). Individual Settlement Payments for Class Members who
6 submit valid and timely requests for exclusion will be redistributed to
7 Settlement Class Members who do not submit valid and timely requests
8 for exclusion on a pro rata basis based on their respective Payment Ratios.
9 (¶II.M1.a)

10 ■ "Payment Ratio" means the respective Workweeks during the
11 Class Period for each Settlement Class Member divided by the sum
12 total Workweeks during the Class Period for all Settlement Class
13 Members. (¶I.Y)

14 ● Tax Allocation: 20% as wages; 65% as penalties and 15%
15 as interest. (¶II.M.1.c)

16 ○ Individual PAGA Payment: Using the Class Data, the Settlement
17 Administrator shall add up the total number of Workweeks for all PAGA
18 Group members during the PAGA Period. The respective Workweeks for
19 each PAGA Group member will be divided by the total Workweeks for
20 all PAGA Group members, resulting in the "PAGA Payment Ratio" for
21 each PAGA Group Member. Each PAGA Group member's PAGA
22 Payment Ratio will then be multiplied by the Net PAGA Amount to
23 calculate each estimated Individual PAGA Payment. (¶II.M.1.b)

24 ■ "PAGA Payment Ratio" means the respective Workweeks during
25 the PAGA Period for each PAGA Group member divided by the

1 sum total of the Workweeks for all members of the PAGA Group
2 during the PAGA Period. (§I.Z)

3 • Tax Allocation: 100% as penalties. (§II.M.1.d)

4 ○ “Workweeks”, for purposes of calculating the distribution of the Net
5 Settlement Amount, means the number of weeks of employment during
6 the Class Period or PAGA Period, as applicable, that each Settlement
7 Class Member or PAGA Group member worked for Defendant. The
8 Settlement Administrator will calculate the number of Workweeks by
9 calculating the number of days each Settlement Class Member was
10 employed during the Class Period or PAGA Period, as applicable,
11 dividing by seven (7), and rounding up to the nearest whole number. Each
12 Settlement Class Member and PAGA Group member who is a former
13 employee no longer working for Defendant will be assigned two (2)
14 additional Workweeks. However, these additional Workweeks shall be
15 excluded from the total number of Workweeks calculated in Article
16 IIJ.A.1. (§I.II)

17 • Uncashed Checks: Any checks issued to Settlement Class Members shall remain
18 valid and negotiable for 90 days from the date of their issuance. If a Settlement
19 Class Member does not cash his or her settlement check within 45 days, the
20 Settlement Administrator will send a letter to such persons, advising that the
21 check will expire after the 90th day, and invite that Settlement Class Member to
22 request reissuance in the event the check was destroyed, lost or misplaced. In the
23 event an Individual Settlement Payment check has not been cashed within ninety
24 (90) days, all funds represented by such uncashed checks, plus any interest
25 accrued thereon, shall be distributed consistent with California Code of Civil

1 Procedure Section 384 as follows: to The Children’s Advocacy Institute (CAI),
2 founded at the nonprofit University of San Diego School of Law in 1989.

3 (¶II.M.1.f) Approval herein is contingent on counsel extending the check cashing
4 deadline to 180 days.

- 5 ○ Class Counsel, Defendant, and Defendant’s Counsel do not have any
6 affiliation or involved with the cy pres. (Lapuyade Supp. Decl., ¶7;
7 Declaration of Timothy Nelson, ¶4.) Approval herein is continent on
8 Plaintiff providing a declaration disclosing any interest in the cy pres (or
9 lack thereof.)
- 10 ● “Funding Date” shall mean 21 calendar days after the Effective Date and is the
11 date Defendant transfers the Gross Settlement Amount into the QSF in accord
12 with the terms of this Agreement. (¶I.L)

13 **C. TERMS OF RELEASES**

14
15 Upon funding of the Gross Settlement Amount by Defendant, in exchange for the
16 consideration set forth in this Agreement, Plaintiff and the Settlement Class Members
17 release the Released Party(ies) from the Released Claims for the Class Period. (¶II.B)

- 18 ● “Released Claims” shall mean all class claims alleged in the First Amended
19 Complaint or those that could have been alleged based on facts alleged in the First
20 Amended Complaint, , including, Unfair Competition in Violation of Business &
21 Professions Code §§ 17200 et seq.; Failure to Pay Minimum Wages in Violation
22 of Cal. Labor Code §§ 1194, 1197 and 1197.1; Failure to Provide Required Meal
23 Periods in Violation of Cal. Labor Code §§ 226.7 and 512; Failure to Provide
24 Required Rest Periods in Violation of Cal. Labor Code §§ 226.7 and 512; Failure
25 to Provide Accurate Itemized Wage Statements in Violation of Cal. Labor Code §

1 226; Failure to Timely Pay Wages When Due in Violation of Cal. Labor Code §§
2 201, 202, and 203; and Failure to Reimburse Employees for Required Expenses
3 in Violation of Cal. Labor Code § 2802. (¶I.CC)

4 Upon funding of the Gross Settlement Amount by Defendant, in exchange for the
5 consideration set forth in this Agreement, the PAGA Group members and the State of
6 California release the Released Party(ies) from the PAGA Released Claims for the PAGA
7 Period. (¶II.C)

- 8 • “Released PAGA Claims” shall mean all PAGA claims alleged in the First
9 Amended Complaint which occurred during the PAGA Period. This release
10 extends only to the penalties available through PAGA consistent *with ZB, N.A. v.*
11 *Superior Court*, 8 Cal. 5th 175, 448 P.3d 239 (2019), and specifically excludes
12 any claims, damages, rights or actions for unpaid wages. (¶I.DD)

13 The named Plaintiff will also provide a general release and a waiver of the protections
14 of Cal. Civ. Code §1542. (¶II.D)

15 The Releases are Effective upon funding of the Gross Settlement Amount by
16 Defendant. (¶¶II.B-D)

17 **D. SETTLEMENT ADMINISTRATION**

- 18
- 19
- 20 • The proposed Settlement Administrator is ILYM Group, Inc. (¶I.GG)
- 21 • Settlement administration costs are estimated to be \$10,000. (¶II.M.5)
- 22 • Notice: The manner of giving notice is described below.
- 23 • “Response Deadline” means the date forty-five (45) days after the Settlement
24 Administrator mails Notice Packets to Settlement Class Members and the last date
25

1 on which Settlement Class Members may submit requests for exclusion or
2 objections to the Settlement. (¶I.EE) settlement Class Members who received a
3 re-mailed Notice Packet shall have their Response Deadline extended 15 days
4 from the original Response Deadline. (¶II.L.4)

- 5 ○ Defendant has the unilateral right to revoke the Settlement if the number of
6 Settlement Class Members who submitted timely and valid written requests
7 for exclusion exceeds 10% of all Settlement Class Members. (¶II.N)

9 **D. ATTORNEYS' FEES**

10 Counsel for the proposed class seek \$81,666.66 (33 1/3 %) in attorney's fees and
11 costs³. (¶II.M.3).

12 **Fee Split:** 70% to JCL, and 30% to BNBD. (Declaration of Dianne Searles ("Searles
13 Decl."), ¶4.)

14 **E. SERVICE AWARDS**

15 The named plaintiff seeks an enhancement award of \$10,000. (¶II.M.2).

16 **F. ADDITIONAL TERMS**

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18
19
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21
22
23 ³ The Court notes that the settlement does not provide for a cap on the costs requested, and the notice states that the
24 fees sought are \$81,585. (See Notice, pg. 4, ¶7.) The maximums disclosed to the Class within the Notice will be the
25 maximums Counsel is eligible to receive.

1 Non-Monetary Consideration-Change in Policy: Defendant will change its
2 compensation policies and will compensate its California truck drivers for all non-
3 productive time in accord with California Labor Code Section 226.2, beginning
4 September 1, 2020. (§II.A.5)

5
6 **III. SETTLEMENT STANDARDS AND PROCEDURE**

7 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
8 of an entire class action, or of a cause of action in a class action, or as to a party,
9 requires the approval of the court after hearing.” “Any party to a settlement agreement
10 may serve and file a written notice of motion for preliminary approval of the settlement.
11 The settlement agreement and proposed notice to class members must be filed with the
12 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
13 Court, rule 3.769(c).

14 “In a class action lawsuit, the court undertakes the responsibility to assess
15 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
16 dismissal of a class action. The purpose of the requirement [of court review] is the
17 protection of those class members, including the named plaintiffs, whose rights may not
18 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
19 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
20 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
21 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
22 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
23 agreement to the extent necessary to reach a reasoned judgment that the agreement is
24 not the product of fraud or overreaching by, or collusion between, the negotiating
25

1 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
2 concerned.”] [internal quotation marks omitted].

3 “The burden is on the proponent of the settlement to show that it is fair and
4 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
5 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
6 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
7 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
8 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

9 Notwithstanding an initial presumption of fairness, “the court should not give
10 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
11 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
12 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
13 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
14 members, the court must independently and objectively analyze the evidence and
15 circumstances before it in order to determine whether the settlement is in the best
16 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
17 In that determination, the court should consider factors such as “the strength of
18 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
19 the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and stage of the proceedings, the
21 experience and views of counsel, the presence of a governmental participant, and the
22 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
23 factors is not exclusive, and the court is free to engage in a balancing and weighing of
24 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
25 245.

1 At the same time, “[a] settlement need not obtain 100 percent of the damages
2 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
3 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
4 substantially narrower than it would be if the suits were to be successfully litigated,’ this
5 is no bar to a class settlement because ‘the public interest may indeed be served by a
6 voluntary settlement in which each side gives ground in the interest of avoiding
7 litigation.’” *Id.* at 250.

8 9 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

10 11 **A. THERE IS A PRESUMPTION OF FAIRNESS**

12 The settlement is entitled to a presumption of fairness for the following reasons:

13 14 **1. The settlement was reached through arm’s-length bargaining**

15 On March 6, 2020, the Parties participated in an unsuccessful full-day mediation
16 with (Ret.) Hon. William Cahill. Thereafter, despite a delay caused by the COVID-19
17 pandemic, in October 2020, the parties were ultimately able to resolve the action with the
18 continued assistance of (Ret.) Judge Cahill. (Lapuyade Decl., ¶9.)

19 20 **2. The investigation and discovery were sufficient**

21 Counsel represents that prior to mediation, the parties engaged in investigation
22 and informal discovery which included Defendant’s production of Plaintiff’s employee
23 file, time and payroll data for a 15% sample of the Settlement Class Members, pertinent
24 data points related to the Settlement Class Members, including but not limited to, the total
25 number of current and former Settlement Class Members and PAGA Group members,

1 the aggregate number of workweeks worked by the Settlement Class Members in the
2 Class Period and, the total number of pay periods worked by the PAGA Group members
3 in the PAGA Period. (*Id.* at ¶¶11-13.) This is sufficient to value the case for settlement
4 purposes.

5
6 **3. Counsel is experienced in similar litigation**

7 Class Counsel represent that are experienced in class action litigation, including
8 wage and hour class actions. (*Id.* at ¶¶43-50.)

9
10 **4. Percentage of the class objecting**

11 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
12 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
13 the court receive objections to the proposed settlement, it will consider and either sustain
14 or overrule them at the fairness hearing.”].

15
16
17 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
18 **FAIR, ADEQUATE, AND REASONABLE**

19
20 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
21 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
22 does when it approves a settlement as in good faith under Code of Civil Procedure
23 section 877.6, the court must at least satisfy itself that the class settlement is within the
24 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
25 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to

1 consider and weigh the nature of the claim, the possible defenses, the situation of the
2 parties, and *the exercise of business judgment* in determining whether the proposed
3 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
4 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

5 6 **1. Amount Offered in Settlement**

7 The most important factor is the strength of the case for plaintiffs on the merits,
8 balanced against the amount offered in settlement.” *Id.* at 130.

9 Class Counsel estimated Defendant’s maximum exposure at **\$2,350,000**, and an
10 estimated reduced exposure at **\$880,000**. (Lapuyade Decl., ¶¶19-27.) Class Counsel
11 obtained a gross settlement valued at \$245,000. This is 10% of Defendant’s maximum
12 exposure and 28% of Defendant’s reduced exposure valuation.

13 14 **2. The Risks of Future Litigation**

15 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
16 motion practice and appeals) are also likely to prolong the litigation as well as any
17 recovery by the class members. Even if a class is certified, there is always a risk of
18 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
19 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
20 conducting class actions, which means, under suitable circumstances, entertaining
21 successive motions on certification if the court subsequently discovers that the propriety
22 of a class action is not appropriate.”].) Further, the settlement was negotiated and
23 endorsed by Class Counsel who, as indicated above, are experienced in class action
24 litigation. Based upon their investigation and analysis, the attorneys representing
25

1 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
2 adequate. (Lapuyade Decl., ¶17.)

3 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
4 which has been served with a copy of the Settlement Agreement and has not yet objected.
5 Any objection by it will be considered at the final fairness hearing. (Exhibit B to
6 Lapuyade Decl.)

7 8 **3. The Releases Are Limited**

9 The Court has reviewed the Releases to be given by the absent class members and
10 the named plaintiffs. The releases, described above, are tailored to the pleadings and
11 release only those claims in the pleadings. There is no general release by the absent
12 class. The named plaintiff's general releases is appropriate given that he was
13 represented by counsel in its negotiation.

14 **4. Conclusion**

15 Class Counsel estimated Defendant's maximum exposure at **\$2,350,000**, and an
16 estimated reduced exposure at **\$880,000**. Class Counsel obtained a gross settlement
17 valued at \$245,000. This is 10% of Defendant's maximum exposure and 28% of
18 Defendant's reduced exposure valuation, which, given the uncertain outcomes, including
19 the potential that the class might not be certified, that liability is a contested issue, and
20 that the full amount of penalties would not necessarily be assessed even if the class is
21 certified and liability found, the settlement is within the "ballpark of reasonableness."
22

23 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

24 A detailed analysis of the elements required for class certification is not required,
25 but it is advisable to review each element when a class is being conditionally certified.

1 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
2 advocating class treatment must demonstrate the existence of an ascertainable and
3 sufficiently numerous class, a well-defined community of interest, and substantial
4 benefits from certification that render proceeding as a class superior to the alternatives.”
5 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

6 **1. The Proposed Class is Numerous**

7 There are 101 putative Class Members. (Lapuyade Decl., ¶38.) Numerosity is
8 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
9 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
10 *class action is liberally construed,*” and citing examples wherein classes of as little as
11 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
12 (1972) 28 Cal.App.3d 1017, were upheld).

13 **2. The Proposed Class Is Ascertainable**

14 “A class is ascertainable, as would support certification under statute
15 governing class actions generally, when it is defined in terms of objective
16 characteristics and common transactional facts that make the ultimate identification
17 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
18 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

19 The class is defined above. Class Members are ascertainable through
20 Defendant’s records. (Lapuyade Decl., ¶38.)

21 **3. There Is A Community of Interest**

22 “The community of interest requirement involves three factors: ‘(1) predominant
23 common questions of law or fact; (2) class representatives with claims or defenses typical
24 of the class; and (3) class representatives who can adequately represent the class.’”
25 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

1 Counsel contends that here, Defendant's policies and practices apply class-wide
2 and Defendant's liability can be determined by facts common to all members of the class.
3 (Lapuyade Decl., ¶39.) Further, counsel contends that Plaintiff's wage and hour claims
4 are typical of the proposed Settlement Class because they arise from the same factual
5 basis and are based on the same legal theories applicable to the other Class Members. (*Id.*
6 at ¶40.) Finally, counsel contends that Plaintiff's interests are coextensive with the
7 interests of the Settlement Class and is represented by adequate counsel. (*Id.* at ¶¶ 41, 43-
8 50; Searles Decl., *passim.*)

9 10 **4. Substantial Benefits Exist**

11 Given the relatively small size of the individual claims, a class action is superior to
12 separate actions by the class members.

13 14 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 15 OF DUE PROCESS**

16 The purpose of notice is to provide due process to absent class members. A practical
17 approach is required, in which the circumstances of the case determine what forms of
18 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
19 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
20 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
21 stake of the individual class members; (4) the cost of notifying class members; (5) the
22 resources of the parties; (6) the possible prejudice to class members who do not receive
23 notice; and (7) the res judicata effect on class members.

24 25 **1. Method of class notice**

1 No later than 14 calendar days after the Preliminary Approval Date, Defendant
2 shall provide the Settlement Administrator with the Class Data. (¶II.L.1) Upon receipt of
3 the Class Data, the Settlement Administrator will perform a search based on the National
4 Change of Address Database to update and correct any known or identifiable address
5 changes. No later than 14 calendar days after receiving the Class Data from Defendant,
6 the Settlement Administrator shall mail and email copies of the Notice Packet to all
7 Settlement Class Members via regular First-Class U.S. Mail and electronic mail. The
8 Settlement Administrator shall exercise its best judgment to determine the current
9 mailing address for each Settlement Class Member. The address identified by the
10 Settlement Administrator as the current mailing address shall be presumed to be the best
11 mailing address for each Settlement Class Member. (¶II.L.3) Any Notice Packets
12 returned to the Settlement Administrator as non-delivered on or before the Response
13 Deadline shall be re-mailed to any forwarding address provided. If no forwarding address
14 is provided, the Settlement Administrator shall promptly attempt to determine a correct
15 address by lawful use of skip-tracing, or other search using the name, address and/or
16 Social Security number of the Settlement Class Member involved, and shall then perform
17 a re-mailing, if another mailing address is identified by the Settlement Administrator. In
18 addition, if any Notice Packets, which are addressed to Settlement Class Members who
19 are currently employed by Defendant, are returned to the Settlement Administrator as
20 non-delivered and no forwarding address is provided, the Settlement Administrator shall
21 notify Defendant. Defendant will request that the currently employed Settlement Class
22 Member provide a corrected address and transmit to the Administrator any corrected
23 address provided by the Settlement Class Member. (¶II.L.4)

24 The Claims Administrator shall also establish and maintain a website landing page
25 that will display The Notice of Class Action Settlement at

1 www.RobertHeathTruckingClassAction.com throughout the Response Deadline.

2 (¶II.L.2.e)

3 **2. Content of class notice.**

4 A copy of the proposed class notice is attached to the Supplemental Declaration
5 of Jean-Claude Lapuyade as Exhibit A. The notice includes information such as: a
6 summary of the litigation; the nature of the settlement; the terms of the settlement
7 agreement; the maximum deductions to be made from the gross settlement amount (i.e.,
8 attorney fees and costs, the enhancement award, and claims administration costs); the
9 procedures and deadlines for participating in, opting out of, or objecting to, the
10 settlement; the consequences of participating in, opting out of, or objecting to, the
11 settlement; and the date, time, and place of the final approval hearing. See Cal Rules of
12 Court, rule 3.766(d).

13 **3. Settlement Administration Costs**

14 The Settlement Agreement provides for a maximum of **\$10,000** for Settlement
15 administration costs including the cost of notice. Prior to the time of the final fairness
16 hearing, the settlement administrator must submit a declaration attesting to the total
17 costs incurred and anticipated to be incurred to finalize the settlement for approval by
18 the Court.

19
20 **E. ATTORNEY FEES AND COSTS**

21 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
22 implied, that has been entered into with respect to the payment of attorney fees or the
23 submission of an application for the approval of attorney fees must be set forth in full in
24 any application for approval of the dismissal or settlement of an action that has been
25 certified as a class action.”

1 Ultimately, the award of attorney fees is made by the court at the fairness
2 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
3 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
4 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
5 1132-1136. In common fund cases, the court may use the percentage method. If
6 sufficient information is provided a cross-check against the lodestar may be conducted.
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
8 agreement by the parties to the contrary, “the court ha[s] an independent right and
9 responsibility to review the attorney fee provision of the settlement agreement and
10 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

12 The question of class counsel’s entitlement to **\$81,66.66** (33 1/3%) in attorney
13 fees will be addressed at the final fairness hearing when class counsel brings a noticed
14 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
15 the court with current market tested hourly rate information and billing information so
16 that it can properly apply the lodestar method and must indicate what multiplier (if
17 applicable) is being sought. Class counsel should also be prepared to justify the costs
18 sought by detailing how they were incurred. The Court notes that the settlement does
19 not provide for a cap on the costs requested, and the notice states that the fees sought
20 are \$81,585. (See Notice, pg. 4, ¶7.) The maximums disclosed to the Class within the
21 Notice will be the maximums Counsel is eligible to receive.

22 **F. SERVICE AWARD**

23 The Settlement Agreement provides for a service award of up to **\$10,000** for the
24 class representative. Trial courts should not sanction enhancement awards of thousands
25 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended,

1 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of
2 quantification of time and effort expended on the litigation, and in the form of reasoned
3 explanation of financial or other risks incurred by the named plaintiffs, is required in
4 order for the trial court to conclude that an enhancement was 'necessary to induce [the
5 named plaintiff] to participate in the suit'" *Clark v. American Residential Services*
6 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

7 In connection with the final fairness hearing, the named Plaintiffs must submit a
8 declaration attesting to why they should be compensated for the expense or risk they
9 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

10 The Court will decide the issue of the enhancement award at the time of final
11 approval.

12
13 **V. CONCLUSION AND ORDER**

14 The parties having satisfied the court's contingencies, the contingencies, the Court
15 grants preliminary approval of the settlement as fair, adequate, and reasonable;

16 (1) Grants conditional class certification;

17 (2) Appoints Dianne Searles as Class Representative;

18 (3) Appoints JCL Law Firm, APC and Blumenthal, Nordrehaug, Bhowmik, De
19 Blouw, LLP, as Class Counsel;

20 (4) Appoints tor ILYM Group, Inc. as Settlement Administrator;

21 (5) Approves the proposed notice plan; and

22 (6) Approves the proposed schedule of settlement proceedings as follows:

- 23 • Preliminary approval hearing: April 27, 2021
24 • Deadline for Defendant to provide class list to settlement administrator: May 11,
25 2021;

- Deadline for settlement administrator to mail notices: May 25, 2021;
- Deadline for class members to opt out: July 23, 2021;
- Deadline for class members to object: July 23, 2021;
- Deadline for class counsel to file motion for final approval: 16 court days prior to final fairness hearing.
- Final fairness hearing: September 16, 2021, at 11:00 a.m.



AMY D. HOQUE

Dated: **APR 27 2021**

Amy D. Hogue
Judge of the Superior Court