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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GERARDO ORTEGA, AND MICHAEL D. PATTON, individually and on behalf of themselves, all others similarly situated, and the general public,

Plaintiffs,

v.

J. B. HUNT TRANSPORT, INC., an Arkansas corporation; and DOES 1 to 100, inclusive,

Defendants.

CASE NO. 07-CV-08336-RGK-AFM
(Hon. R. Gary Klausner)

PLAINTIFFS' NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Proposed Order, Proposed Judgment, and Declarations of Stanley D. Saltzman and Emilio Cofinco filed concurrently herewith]

Date: February 11, 2019
Time: 9:00 a.m.
Room: 850
Trial: February 19, 2019

TO: ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 11, 2019, at 9:00 a.m. or as soon thereafter as the matter can be heard in Courtroom No. 850 in the above entitled courthouse located at 255 Temple Street, Los Angeles, California, Plaintiffs Gerardo Ortega and Michael Patton, on their own behalf, and on behalf of the proposed settlement class, will move for an order granting final approval of a class-wide settlement reached with Defendant J.B. Hunt Transport, Inc. ("Defendant"). Defendant does not oppose this Motion.

However, the parties jointly request that the Court only tentatively grant final approval of the settlement on the date of the fairness hearing, and delay entry of the order granting final approval until the 90-day notice period required by the Class Action Fairness Act, 28 U.S.C. § 1715(d) elapses on April 16, 2019, as the notice was inadvertently not issued until January 16, 2018. On April 17, 2019, the parties will jointly file a notice apprising the Court whether any State or Federal official has responded to the CAFA Notice, and if not, entry of the final approval order will be appropriate.

This Motion is based upon this Notice, the accompanying Memorandum of Points & Authorities, the declarations of Stanley D. Saltzman, the pleadings and papers on file in this action, any matters of which the Court may take judicial notice, and upon such further evidence, both documentary and oral, as may be presented at the hearing of said motion.

DATED: January 18, 2019

MARLIN & SALTZMAN, LLP
THE CULLEN LAW FIRM

By: s/ *Adam M. Tamburelli*
Stanley D. Saltzman, Esq.
Adam M. Tamburelli, Esq.
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiffs Gerardo Ortega and Michael Patton ("Plaintiffs"), individually and on behalf of the conditionally certified settlement class, seek this Court's final approval of the *non-reversionary* settlement in the amount of $15,000,000.00 ("Settlement"), Dkt. No. 247-2, which this Court preliminarily approved on November 28, 2018. Dkt. No. 352. Defendant J.B. Hunt Transport, Inc. ("Defendant") does not oppose this motion.

Plaintiffs are pleased to inform the Court that:

- The settlement administrator mailed class notice to 12,141 settlement class members. Out of the total mailing, only 1,748 were originally returned due to out of date or incorrect addresses;
- The settlement administrator was able to trace and locate updated addresses for 1,648 of the returned notices, all of which were re-mailed per the terms of the Settlement Agreement, and an additional 82 notices were forwarded by the Post Office;
- At the conclusion of the mandated notice mailing process, only 135 class notice mailings (1.1%) were returned as undeliverable with no forwarding address, an extraordinary result given the length of the class period;
- There were no objections to the Settlement; and
- Only nine (9) settlement class members out of the total universe of 12,141 settlement class members validly opted-out of the Settlement, representing an astonishingly low 0.07% of the settlement class.

In short, the results reveal that the class notice process was extraordinarily successful and that the settlement class members have overwhelmingly endorsed the Settlement.

The Settlement provides that Defendant will pay $15,000,000.00 to settle the claims of the settlement class defined as:

> All California-based, local and regional intermodal and local and regional Dedicated Contract Services drivers employed by J.B. Hunt at any time between November 19, 2003 and December 8, 2018.

Since the settlement is non-reversionary, the entire $15,000,000.00 will be distributed as provided in the Settlement Agreement preliminarily approved by the Court. Importantly, no claim forms were required of any settlement class member, so if the Court grants final approval of the Settlement, the Settlement Administrator will automatically mail payments to all of the settlement class members other than the nine (9) who elected to opt out of the settlement class.

An objective evaluation of the Settlement confirms that it is fair, reasonable and adequate. The Parties negotiated the Settlement at arm's length under the guidance of Mark Rudy, Esq., a well-regarded mediator specializing in resolving wage and hour class actions. Mr. Rudy stewarded the parties through two separate mediations and multiple follow-up discussions with counsel for the parties. The parties agreed to the Settlement on September 7, 2018, after the pretrial conference and only eighteen days before the trial date. As set forth thoroughly in Plaintiffs' Motion for Preliminary Approval, Dkt. No. 347, and Plaintiffs' pending Motion for Attorneys' Fees, Costs, and Incentive Awards, Dkt. No. 356, the case was investigated and extensively litigated for eleven years prior to the parties ultimately agreeing to the settlement now before the Court.

The Settlement provides settlement class members with valuable relief for their claims, particularly when viewed in light of the Court's order decertifying the class shortly before trial. This substantial settlement wholly eliminates the downside risk of Defendant prevailing on any one of several case-dispositive legal defenses at trial or on appeal, the risk that the Ninth Circuit Court of Appeals would affirm the Court's order decertifying the class, and the risk that legislation or regulatory action would eliminate Plaintiffs'

claims.[1]

In sum, the Settlement meets the criteria for final approval, as it easily falls within the range of what courts consider fair, reasonable, and adequate. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

II. THE CLASS NOTICE PROCESS WAS SUCCESSFULLY IMPLEMENTED

A. Dissemination of Class Notice

The Court appointed CPT Group, Inc. as the Settlement Administrator, and it has provided the Court with a full report of its activities. *See* Declaration of Emilio Cofinco ("Cofinco Decl."), Dkt. No. 358-2. Specifically, the Settlement Administrator complied with this Court's orders concerning dissemination of class notice *Id.* at ¶¶2-11; operated a toll-free telephone number for settlement class members to call with inquiries concerning the Settlement, and created and operated a website that contained the Settlement details along with relevant documents. *Id*. at ¶¶3-4, 15-16.

Additionally, Plaintiffs provided notice of the proposed settlement to the California Department of Labor and Workforce Development ("LWDA") pursuant to Labor Code § 2699(l). Saltzman Decl., Dkt. No. 358-1, ¶3.

B. Plaintiffs' Motion for Attorneys' Fees, Costs, and Incentive Awards

Class Counsel filed their Motion for Attorneys' Fees, Costs, and Incentive Awards on December 28, 2018, which was two weeks before the January 11, 2019 objection/exclusion deadline. *See* Dkt. No. 356. This conforms to the requirements of the Ninth Circuit as set forth in *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993

[1] In fact, on December 21, 2018, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration issued an Order finding that the Motor Carrier Safety Act of 1984 preempts California's meal and rest break laws. *See* https://www.fmcsa.dot.gov/regulations/californias-meal-and-rest-break-rules-preemption-determination. The legality of that recent Order will now be the subject of many court challenges, which will include the issue of whether or not, even if the new order is found to be legal, it could ever apply retroactively. However, the Order illustrates the legislative and regulatory risks presented by further litigation of the case.

(9th Cir. 2010). The Settlement Administrator posted the motion and the supporting documents to the settlement website that same day. Cofinco Decl., Dkt. No. 358-2, ¶16.

C. There Were No Objections, and Only Nine Exclusion Requests

No settlement class members objected to the settlement, and the Settlement Administrator only received nine valid exclusion requests. Cofinco Decl., Dkt. No. 358-2, ¶¶12, 14. For a settlement class of over 12,000 people, this is an exceptionally low number representing a 99.93% participation rate by the settlement class, and speaks very favorably to the response of the settlement class to the Settlement.

D. Challenges to Employment History/Information Requests

As of the deadline to file disputes related to the assigned number of workweeks listed on a settlement class member's individually-tailored notice, only three class members have submitted such disputes to the Settlement Administrator. The Settlement Administrator has replied to each dispute. For one of the disputes, Defendant confirmed that its records are accurate, and for the other two, the settlement class members did not state the number of disputed workweeks or provide supporting documentation. As of this date, the Settlement Administrator is awaiting further replies, which are due by January 24, 2019. Cofinco Decl., Dkt. No. 358-2, ¶13. The Settlement Administrator will continue to work on these two remaining workweek disputes according to the terms of the Settlement Agreement.

E. Class Member Contacts with the Settlement Administrator

The availability of the toll-free telephone number (used by more than 350 callers) and the Settlement website enhanced the effectiveness of the notice procedures implemented for this action. Cofinco Decl., Dkt. No. 358-2, ¶¶3-4, 15-16.

III. THE SETTLEMENT EXCEEDS THE STANDARDS FOR FINAL APPROVAL

A. Terms of the Settlement

Plaintiffs detailed the terms of the Settlement in their Motion for Preliminary Approval, and again in their pending Motion for Approval of Fees, Costs and Incentive

awards. In order to avoid undue duplication, Plaintiffs will not repeat the terms in detail; however, the critical terms are as follows: (a) $15,000,000.00 to be paid for the benefit of the settlement class; (b) the settlement is totally non-reversionary; (c) no claims forms are required of the settlement class members; and (d) 98.9% of the class notice mailings were successfully delivered by mail.

The gross recovery per settlement class member is dependent on the length of time they were employed by Defendant. The highest gross individual settlement payment is approximately $11,929.04 and the average individual gross settlement payment is approximately $1,236.40. Cofinco Decl., Dkt No. 358-2, ¶17. After deductions, including employee payroll taxes, the highest net individual settlement payment is approximately $7,168.98 and the average individual net settlement payment is approximately $743.08. *Id*. That result is impressive in any wage and hour litigation—especially considering that the class was decertified at the time of Settlement—and unquestionably explains the lack of any objections to the Settlement and the miniscule number of opt-outs. The class members await distribution of their settlement funds.

The Settlement also includes the following relevant terms: (a) $500,000.00 is allocated to resolve the Private Attorneys General Act ("PAGA") claims (with 75% to be paid to the LWDA), a significant sum which is well above allocations in other class action settlements; (b) 40% of each Settlement payment is allocated for unpaid wages (with the settlement administrator to withhold employee payroll taxes and submit those taxes to the relevant taxing authorities, with Defendant responsible for playing employer payroll taxes), and 60% is allocated for non-wage damages and interest.

Finally, the Settlement's narrow release provides that the settlement class members' release in favor of the Defendant and its affiliates is limited to only those claims arising out of the causes of action alleged in the Action, as well as any claim that arises out of the factual allegations actually alleged in the Action. As this Court has previously found, releases are not overly broad where, as here, they only release claims based on the identical

factual predicate as the underlying the claims. *Karam v. Corinthian Colleges Inc.*, 2017 WL 4070889, at *5 (C.D. Cal. 2017); *accord Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 748 (9th Cir. 2006). However, the individual named Plaintiffs' release is broader, and generally releases all claims against Defendant as part of the broader consideration demanded of them by Defendant, which is included in the calculation of the requested service awards.

B. Standard of Review

It is well established in the Ninth Circuit that "voluntary conciliation and settlement are the preferred means of dispute resolution." *Officers for Justice v. Civil Svc. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Class actions readily lend themselves to compromise because of the difficulties of proof, the risks of litigation, and the extended time to resolution. "[T]here is an overriding public interest in settling and quieting litigation," and this is "particularly true in class action suits." *Van Bronkhorst v. Safeco Corp*., 529 F.2d 943, 950 (9th Cir. 1976); *see also Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).

In deciding whether to approve a settlement under Rule 23(e), the Court must find that the proposed settlement is "fair, adequate and reasonable." The district court exercises its sound discretion in approving a settlement. *See Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993). In exercising its discretion, however, "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice*, 688 F.2d at 625. The Ninth Circuit has clearly defined the limits of the Court's inquiry:

> [T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the

> dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.

Id. (emphasis in original).

Moreover, the Court's inquiry into whether a proposed settlement is fair, adequate, and reasonable is relatively less probing where, as here, the parties settle later in the litigation after a class was certified. *See Perez v. Tilton*, 2006 WL 2433240, at *2 (N.D. Cal. 2006) (Where "the parties reach a settlement before a class is certified, 'a more probing inquiry' into whether a proposed settlement is fair, adequate, and reasonable is required."). Here, not only was the class certified by the Court for many years before it was recently decertified, even after another motion to decertify had been denied, but the parties and the Court also had the benefit of rulings on three (3) summary judgment motions, in addition to extensive trial workup, including drafting of memoranda of facts and contentions of law, motions in limine, jury instructions, and a proposed pretrial order. Thus, there is not only substantial evidence in the record to justify the Settlement, but in fact considerably more than exists in most settlements.

C. Class Notice Comports with Fed. R. Civ. P. 23 and Due Process

Rule 23 and due process require that the settlement class receive the best notice practicable reasonably calculated under the circumstances, which the parties clearly provided here. Indeed, in the Preliminary Approval Order, this Court approved the class notice as to form and content, and found that the regular mailing of the class notice to settlement class members according to the contact information provided by Defendant substantially met the requirements of Rule 23 and due process, and was the best notice practicable under the circumstances. *See* Dkt. Nos. 352, p.6; 353, pp.4-5.

The class notice informed settlement class members of the nature of the Settlement and: (1) their right to receive their Settlement payment, and the basis on which the payment will be calculated; (2) their right to opt-out of the Settlement; (3) their right to object to the Settlement or to Plaintiffs' Motion for Attorneys' Fees, Costs, and Incentive Awards;

(4) the language of the release; and (5) individual settlement class members' number of work weeks. *See* Cofinco Decl., Dkt No. 358-2, ¶6, and Exhibit B thereto. Settlement class members had until January 11, 2019 to opt out or object to the Settlement and/or the motion for fees, costs, and incentive awards.

The parties and the settlement administrator followed the schedule for the settlement process approved by the Court—including dissemination of the class notice. Defendant timely provided the settlement administrator with the Class list. As noted above, the settlement administrator mailed the Settlement Notice to the 12,141 individuals on the Class list by December 12, 2018. After forwarding and re-mailing the notice as warranted, only 135 class notices were not delivered; thus, the class notice process was successful in delivering nearly 98.9% of the class notice mailings, an extraordinary result, especially when considering that ***the Class period extends back over fifteen years, to 2003***.

Additionally, the settlement administrator established a secure website containing information about the Settlement, including copies of the class notice, Settlement Agreement, and fee motion in its entirety (including all declarations and exhibits) so that all settlement class members would have easy access to it at least fourteen days prior to the objection/exclusion deadline. Finally, the settlement administrator maintained a toll-free number and provided information via telephone to settlement class members inquiring about the Settlement. Cofinco Decl., Dkt. No. 358-2, ¶¶3-4, 15-16.

In short, the manner in which notice was provided was the best notice practicable and reasonably calculated under the circumstances to apprise settlement class members of the Settlement and to give them the chance to be heard. Given the positive results, the class notice process met or exceeded the requirements of Rule 23 and satisfies due process.

D. The Settlement Is the Result of Good-Faith, Arm's-Length Negotiations

The parties reached this agreement after nearly eleven years of litigation, investigation, discovery, motion practice, full trial preparation, and mediation. This prolonged process reflects the zealous efforts of Class Counsel to champion the interests

of the settlement class. The mediations were facilitated by Mark Rudy, a highly regarded class action employment law mediator, further demonstrating the non-collusive nature of the Settlement. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011); *see also Feyko v. aAD Partners LP*, 2014 WL 12572678, at *7 (C.D. Cal. 2014) ("Settlements reached with the help of a mediator are likely non-collusive.")

Moreover, the Settlement bears no signs of collusion or irreconcilable conflicts. Instead, it follows extensive arms-length negotiations and due notice to the settlement class. Settlement class members will receive significant monetary awards from a non-reversionary common fund Settlement with no *cy pres* component, and they will receive this money despite the fact that the Court decertified the class shortly before trial, calling into question whether they would have received anything at all absent settlement. Further, Class Counsel will not receive a disproportionate share of the Settlement or any separate payment of attorneys' fees, so the interests of Class Counsel coincide precisely with the interests of the settlement class.

In sum, the parties entered into the Settlement in good faith, only after arm's-length negotiations without collusion, warranting a presumption in favor of approval. *Officers for Justice*, 688 F.2d at 625.

E. The Settlement Is Fair, Reasonable, and Adequate

In evaluating the fairness, reasonableness, and adequacy of a class settlement, courts consider and balance a number of factors, including: "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (citing *Torrisi*, 8 F.3d at 1375).

Under each of these factors, the Settlement easily warrants this Court's approval.

1. The Strength of Plaintiffs' Case Supports Final Approval

As stated above, there can be no debate that in the years this case has been pending, several critical decisions have dramatically altered the legal landscape in employment class actions, and class actions in general. Courts have certainly taken note of the same, recognizing that "there is little doubt that, as a result of" decisions such as *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) and *Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal. 4th 1004 (2012), "plaintiffs face increased difficulties in winning wage-and-hour class action lawsuits." *Adoma v. University of Phoenix, Inc.*, 2012 WL 6651141, at *7 (E.D. Cal. 2012). With these decisions at their back, Defendant vigorously litigated the underlying merits of the action past the pretrial conference and until the eve of trial, which itself weighs in favor of approval. *See Eddings v. Health Net, Inc.*, 2013 WL 3013867, at *3 (C.D. Cal. 2013) (finding that, in a complex wage and hour class action where the defendant engaged in vigorous litigation, this factor weighs in favor of settlement approval). Indeed, Defendant prevailed on its motion to decertify the class approximately six weeks before trial, and therefore the settlement class would have recovered nothing unless, at minimum, Plaintiffs ultimately prevailed on appeal of that ruling.

Moreover, Plaintiffs also faced Defendant's arguments that federal law preempted Plaintiffs' claims. To be sure, in 2014 the Court found that the Federal Aviation Administration Authorization Act of 1994 preempted Plaintiffs' claims, and entered judgment against them, including entry of a substantial taxable cost award in favor of Defendant. While Plaintiffs ultimately were successful in their appeal, Defendant made clear in its pretrial filings that it intended to attempt to re-litigate the issue at trial. Additionally, Defendant argued that the Motor Carrier Safety Act of 1984 preempts Plaintiffs' meal and rest break claims, which Defendant asserted as an affirmative defense and indicated that it also intended to raise at trial. Importantly, as discussed above, the FCMSA recently reversed its own prior order and position on the preemption issue, and opined that the law does, in fact, preempt California's meal and rest break laws.

Therefore, Plaintiffs' case was certainly a difficult one. If Defendant were to prevail on one or more defenses at trial or on appeal, Plaintiffs and settlement class members would recover little or nothing. Given the constantly evolving state of the law and the constant threats to the maintenance of the claims on a class action basis, the settlement now presented for final approval is even more exceptional.

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation Weigh in Favor of Settlement Approval

As evidenced by the fact that this case was litigated for nearly eleven years, it involved novel and evolving issues as to whether and to what extent settlement class members were entitled to wages and work breaks. Although the trial was imminent at the time of settlement, continued litigation of these issues would be slow and costly. In fact, settlement class members would receive nothing unless Plaintiffs won at trial on their individual claims, ultimately prevailed on their appeal of the order decertifying the class, and on remand, prevailed at the trial of the class-wide claims—a process that would take a minimum of two to three years. Defendant's almost certain appeal of any such rulings would complicate and further delay any relief to settlement class members. Such appeals would almost certainly further delay final resolution by at least another four to five years.

Fortunately, the non-reversionary Settlement provides cash payments to members of the settlement class without the substantial risks and inevitable delays of further litigation. *See Campbell v. First Inv'rs Corp*., 2012 WL 5373423, at *5 (S.D. Cal. 2012) (recognizing that the process of establishing entitlement to damages and the potential for delay and appeals weighed in favor of settlement approval).

3. The Risk of Maintaining Class Action Status through Trial Supports Final Approval.

This factor weighs heavily in favor of final approval because this "risk" was actually realized when the Court decertified the class, and yet the parties negotiated a class-wide Settlement that provides substantial cash payments to settlement class members.

4. The Amount Offered in Settlement Supports Final Approval

Defendant will pay $15,000,000.00, less approved deductions, to 12,132 current and former drivers. Each settlement class member will receive a gross settlement payment of approximately $800 per year, which is a sizeable recovery and a meaningful share of his or her actual losses.

That amount of the Settlement is unquestionably substantial, and as Plaintiffs explained in detail in the Motion for Preliminary Approval, represents approximately a 30% recovery of the total estimated recoverable damages at issue in the case. *See* Dkt. No. 347, pp.9-12. As relevant here, "the Court's inquiry 'is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion.'" *Ross v. Trex Co., Inc.*, 2013 WL 6622919, at *4 (N.D. Cal. 2013) (quoting *Hanlon*, 150 F.3d at 1027); *see also In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement in which the class received payments totaling 6% of potential damages).

5. The Extent of Discovery Completed and the Stage of the Proceedings Supports Final Approval

When litigation has advanced to the point where "the parties have sufficient information to make an informed decision about settlement," this factor weighs in favor of approval. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Here, the parties settled the case on the eve of trial, after litigating this case for almost eleven years, and after all discovery was completed—including expert discovery and reports. This discovery was so extensive that the National eDiscovery Counsel for one of the law firms representing Defendant characterized the data produced as a "monumental amount of data." *See* Weiner Decl., Dkt. No. 264-12 (also attesting that "I have never been involved in a case where such a massive volume of electronic data was collected, culled and produced to an adversary in such a short period of time"). Thus, the parties had extensive information about all relevant issues, and, as demonstrated by the competing motions for summary judgment filed in June and July of 2018, they were able to analyze

the strengths and weaknesses of their respective positions.

For these reasons, the extent of discovery and the advanced stage of proceedings decisively support final approval of the Settlement. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (this factor weighed in favor of settlement approval where the parties had conducted extensive discovery and gone through a round of summary judgment motions).

6. The Views of Experienced Counsel Support Final Approval

"Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation." *Nat'l Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (quotation omitted). Courts recognize that "[a] presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery." *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988). In this case, Class Counsel are highly skilled in class action litigation, as their several declarations filed in connection with the motions for preliminary approval and for fees, costs, and incentive awards, amply demonstrate. *See* Dkt. Nos. 358-1, 6; 356-1, 6, 9. They have all participated in this litigation for many years, they have actively devoted themselves to the steps needed to keep the case moving forward, they have evaluated the pending Settlement at length, and they have concluded that the proposed Settlement offers excellent benefits to settlement class members under the circumstances. Additionally, Defendant was represented by two well-respected, national law firms in negotiating this Settlement, which further supports its fairness, adequacy, and reasonableness.

7. The Government Participant Factor Supports Final Approval

No government entity participated in this case, but the Settlement allocates $500,000 to the PAGA claims, with 75% of that amount to be paid to the LWDA pursuant to Labor Code § 2699(l). This amount is well above amounts allocated and approved in most other cases. *See McKenzie v. Fed. Express Corp.*, 2012 WL 12882124, at *5 (C.D.

Cal. 2012). Furthermore, PAGA penalties in this case would be largely duplicative of monies already provided under the Settlement, and thus the PAGA allocation here recognizes that any PAGA award is within the Court's broad discretion. Importantly, Plaintiffs provided the required notice to the LWDA of the settlement allocation, and the LWDA did not indicate any opposition thereto. Saltzman Decl., Dkt. No. 358-1, ¶3.

8. The Reaction of the Settlement Class Supports Final Approval

Not one of the 12,141 settlement class members objected to the Settlement, and the absence of objections to a proposed class action settlement supports the assertion that the settlement is fair, reasonable, and adequate. *See National Rural Telecom. Coop*, 221 F.R.D. at 529. Also demonstrating the high level of support for the Settlement, only nine drivers, representing 0.03% of the settlement class, exercised their right to opt-out of the Settlement. Accordingly, this factor also decisively favors final approval of the Settlement.

IV. THE PARTIES REQUEST THAT THE COURT TENTATIVELY GRANT FINAL APPROVAL OF THE SETTLEMENT, BUT DELAY ENTRY OF THE FINAL APPROVAL ORDER PENDING EXPIRATION OF THE CLASS ACTION FAIRNESS ACT'S STATUTORY NOTICE PERIOD

Section 1715(b) of the Class Action Fairness Act of 2005 ("CAFA") provides that "not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement….." 28 U.S.C. § 1715(b). Section 1715(d) states that a Court may not issue an order granting final approval of a proposed settlement "earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice." 28 U.S.C. § 1715(b).

Due to an oversight caused by the accelerated settlement process, Defendant did not serve the required notice as required by § 1715(b) until January 16, 2019. *See* Defendant's Statement of Service, Dkt. No. 357. Therefore, although the final fairness hearing is set for February 11, 2019, the 90-day notice period will not expire until April 16, 2018.

Accordingly, rather than further delaying relief to the settlement class members who have overwhelmingly supported the Settlement and who have waited up to 15 years for reimbursement of wages allegedly withheld from them, the parties propose that the Court proceed forward with the final fairness hearing on February 11, 2019 as set forth in the class notice, issue a tentative order granting final approval assuming that the Court agrees the settlement merits the same, but delay entry of the final approval order until **April 17, 2018**. On that date, the parties will jointly file a notice apprising the Court whether any State or Federal official has responded to the CAFA Notice.

If, as the parties anticipate, they receive no response from any State or Federal official by April 17, 2019,[2] the Court can then enter the final approval order on that date. If the parties do receive a response that requires Court review, they will then propose a briefing schedule and hearing date for the Court's consideration.

Importantly, this procedure would not require additional class notice. Under the terms of the Settlement, had CAFA notice been sent on time and assuming the Court entered the final approval order after the final fairness hearing on February 11, 2019, the Settlement funds were to be distributed beginning 58 days thereafter, or on April 10, 2019. *See* Settlement Agreement, Dkt. No. 347-2, §§2.1.8, 2.5.1, 2.12.1. Under the modified schedule proposed by the parties, assuming the Court enters the final approval order on April 17, 2018, Defendant has agreed to fund the Settlement within seven (7) days thereafter, and funds would be distributed beginning just after April 24, 2019. Thus, the distribution of funds to settlement class members would be delayed by only fourteen days, whereas re-

[2] Class Counsel has been involved in dozens of settlements in wage and hour cases since CAFA was enacted in 2005, and no State or Federal official has *ever* responded to a CAFA notice in any of its cases, be they large or small, including settlements in excess of one hundred million dollars. There is no reason to believe that this non-reversionary, non-claims made Settlement, affording considerable relief to the decertified class, would be any different. *See* Saltzman Decl., Dkt. No. 357-1, ¶4.

setting the final approval hearing until after the CAFA notice period expires in April would unduly delay the payments to the settlement class members.

Finally, this proposed schedule would not require the Court to continue the current February 19, 2019 trial date. Indeed, if the Court holds the fairness hearing as scheduled on February 11, 2019, it can determine at that time whether the Settlement is fair, adequate, and reasonable in its discretion based on the substantial record before it. If the Court finds that the Settlement tentatively warrants approval subject to the response of State and Federal officials, the Court can then take the trial date off calendar and re-set it in the future in the unlikely event that a CAFA response renders the Settlement fatally deficient, or it can continue the existing trial date to a new date following the April 17, 2019 expiration of the CAFA notice period.

V. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court: (a) find that the Settlement is fair, adequate, and reasonable; (b) enter the proposed Final Approval Order (Dkt. No. 358-3) and proposed Final Judgment (Dkt. No. 358-4) pending receipt of notice from the parties on April 17, 2019 that no State or Federal official has responded to CAFA notice; (c) approve the pending motion for fees, costs, and incentive awards; (d) either strike the February 19, 2019 trial date, or continue it to a date after the CAFA notice period expires on April 16, 2019; and (e) grant any other relief the Court deems just.

DATED: January 18, 2019

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