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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 EUGENE CHAVEZ, individually,
and on behalf of other members of
12 the general public similarly situated,
and as an aggrieved employee
13 pursuant to the Private Attorneys
General Act (“PAGA”),

14 Plaintiff,

15 vs.

16 FEDEX FREIGHT, INC., an
Arkansas corporation; and DOES 1
17 through 10, inclusive,

18 Defendants.
19

Case No.: 5:12-cv-01496-DSF (FFMx)

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION**

Date: July 22, 2013
Time: 1:30 p.m.
Ctrm: 840
Judge: Hon. Dale S. Fischer

Complaint Filed: August 6, 2012
Trial Date: None

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1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on July 22, 2013 at 1:30 p.m., or as soon
4 thereafter as counsel may be heard, in Courtroom 840 of the United States
5 District Court for the Central District of California, located at 255 E. Temple St.,
6 Los Angeles, CA 90012, the Honorable Dale S. Fischer presiding, Plaintiff
7 Eugene Chavez (“Plaintiff”) will, and hereby does, move this Court to:

- 8 1. Preliminarily approve the settlement described in the Joint
9 Stipulation of Class Action Settlement, Notice of Class Action Settlement, and
10 Dispute Form, attached collectively as Exhibit 1 to the Declaration of Mónica
11 Balderrama;
- 12 2. Conditionally certify the Settlement Class;
- 13 3. Approve distribution of the proposed Notice of Class Action
14 Settlement and Dispute Form to the Settlement Class;
- 15 4. Appoint Plaintiff Eugene Chavez as the Class Representative;
- 16 5. Appoint Initiative Legal Group APC as Class Counsel;
- 17 6. Appoint Simpluris, Inc. as the Settlement Administrator; and
- 18 7. Set a hearing date for final approval of the Settlement.

19 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
20 Memorandum of Points and Authorities in Support of the Motion for Preliminary
21 Approval of Class Action Settlement; (3) the Declaration of Mónica Balderrama;
22 (4) the Joint Stipulation of Class Action Settlement and Release; (5) the Notice
23 of Class Action Settlement; (6) the Dispute Form; (7) the [Proposed] Order
24 Granting Preliminary Approval of Class Action Settlement; (8) the records,
25 pleadings, and papers filed in this action; and (9) upon such other documentary
26 and oral evidence or argument as may be presented to the Court at or prior to the
27 hearing of this Motion.
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Dated: June 24, 2013

Respectfully submitted,

Initiative Legal Group APC

By: _____

Mónica Balderrama
G. Arthur Meneses

Attorneys for Plaintiff Eugene Chavez

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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 1
- II. FACTS AND PROCEDURE..... 3
 - A. Overview of the Litigation 3
 - B. The Parties Conducted Discovery 4
 - C. The Parties Attended Mediation And After Further
Production of Evidence, Engaged in Continued Settlement
Negotiations 5
 - D. The Proposed Settlement Fully Resolves The Claims in
This Case..... 6
 - 1. Composition of the Class 6
 - 2. Settlement Consideration 6
 - 3. Formula For Calculating Settlement Payments..... 7
 - 4. Release by Class Limited to Claims in Complaint..... 8
 - 5. Notice to the Class 9
- III. ARGUMENT 10
 - A. The Proposed Class Action Settlement Should Receive
Preliminary Approval..... 10
 - 1. Courts Review Class Action Settlements to Ensure
That the Terms Are Fair, Adequate, and Reasonable 10
 - 2. The Settlement Was Reached Through Arm’s-Length
Bargaining 11
 - 3. The Settlement Was Based on Facts Uncovered
Through Investigation, Discovery, and Preparation for
Mediation..... 12
 - 4. Counsel Is Experienced In Similar Litigation 13

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 1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

1 5. The Settlement Was Achieved After Evaluating the
 2 Strengths of Plaintiff’s Case and the Risks, Expense,
 3 Complexity, and Likely Duration of Further Litigation..... 13
 4 B. The Proposed PAGA Payment Is Reasonable 15
 5 C. The Proposed Payment To The Class Representative Is
 6 Reasonable 15
 7 D. Plaintiff’s Counsel’s Fees And Costs Are Reasonable 16
 8 E. Conditional Class Certification Is Appropriate for
 9 Settlement Purposes 17
 10 1. The Proposed Class Meets the Requirements of
 11 Rule 23..... 17
 12 2. The Proposed Class Is Sufficiently Numerous and
 13 Ascertainable 17
 14 3. There Are Questions of Law and Fact that Are
 15 Common to the Class Which Predominate Over
 16 Individual Issues 18
 17 4. Plaintiff’s Claims Are Typical of the Proposed
 18 Settlement Class 19
 19 5. Plaintiff and Plaintiff’s Counsel Will Adequately
 20 Represent the Interests of the Proposed Settlement
 21 Class 20
 22 6. Class Settlement Is Superior to Other Available Means
 23 of Resolution 21
 24 F. The Proposed Class Notice Adequately Informs Class
 25 Members About The Case And Proposed Settlement 22
 26 IV. CONCLUSION..... 24
 27
 28

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

1
2
3
4
5
6
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8
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10
11
12
13
14
15
16
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18
19
20
21
22
23
24
25
26
27
28

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1995)..... 17

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Ed. 2d 732 (1974) 22

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(N.D. Cal. 2010) 18

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al.*, 730 F.2d 509 (7th Cir. 1984) 14

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2005)..... 11

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Case No. 06-3202, 2009 U.S. Dist. LEXIS 60790 (E.D. Pa.
July 16, 2009) 15

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Dist. LEXIS 37286 (N.D. Cal. Mar. 18, 2013) 11

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INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

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 2 LEXIS 47518 (N.D. Cal. June 20, 2007) 18
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 4 2007)..... 20
 5 *Marisol v. Giuliani*, 126 F.3d 372 (2nd Cir. 1997)..... 20
 6 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir.
 7 1982)..... 13
 8 *Radcliffe v. Experian Info. Solutions, Inc.*, 2013 U.S. App. LEXIS
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 17 Cal. 2009) 17
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 20
 21 **STATE CASES**
 22 *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715 (2004)..... 15
 23 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380 (2010)..... 15
 24 *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43 (2008)..... 16
 25 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576 (2010)..... 15
 26
 27 **FEDERAL STATUTES**
 28 Cal. Cen. Dist. L. R. 23-3..... 3, 4

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, MEZZANINE, LOS ANGELES, CALIFORNIA 90067

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2 Fed. R. Civ. P. 23(a).....17, 18, 20

3 Fed. R. Civ. P. 23(a)(1) 17

4 Fed. R. Civ. P. 23(a)(2) 18

5 Fed. R. Civ. P. 23(a)(4) 20

6 Fed. R. Civ. P. 23(b)(3) 17

7 Fed. R. Civ. P. 23(c)(2) 22, 23

8 Fed. R. Civ. P. 23(e)(1) 11

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10 Fed. R. Civ. P. 26 4

11

12 **STATE STATUTES**

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14 Cal. Lab. Code § 201..... 8

15 Cal. Lab. Code § 202..... 8

16 Cal. Lab. Code § 203..... 7, 8

17 Cal. Lab. Code § 204..... 8

18 Cal. Lab. Code § 226..... 8

19 Cal. Lab. Code § 226(a) 19

20 Cal. Lab. Code § 226(a)(2)..... 20

21 Cal. Lab. Code § 226(a)(9)..... 20

22 Cal. Lab. Code § 226.7..... 8

23 Cal. Lab. Code § 510..... 8

24 Cal. Lab. Code § 512..... 8

25 Cal. Lab. Code § 1194..... 8

26 Cal. Lab. Code § 1197..... 8

27 Cal. Lab. Code § 1197.1..... 8

28 Cal. Lab. Code § 1198..... 8

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INITIATIVE LEGAL GROUP APC
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Eugene Chavez seeks preliminary approval of the Joint Stipulation of Class Action Settlement and Release (“Settlement”),¹ which, if approved, would provide significant monetary relief for approximately 1514 current and former employees of FedEx Freight, Inc.²

The basic terms of the Settlement provide for the following:

- (1) A Settlement Class defined as: All non-exempt and/or hourly paid pickup and delivery drivers (aka “city drivers”) who have been employed by FedEx in the state of California from July 24, 2009 to April 9, 2013³; with a class release period of August 6, 2008⁴ to the date upon which this Settlement is preliminarily approved by the Court.
- (2) A non-reversionary Class Settlement Amount of one million twenty-five thousand dollars (\$1,025,000). This is the maximum settlement amount to be paid by Defendant in full satisfaction of all claims arising from this action, which includes:
 - (a) A \$718,750 Net Settlement Amount (the Class Settlement Amount minus attorneys’ fees and costs, the payment to the Labor and Workforce Development Agency, Settlement

¹ Unless indicated otherwise, all capitalized terms used have the same meaning as those defined by the Settlement. The Settlement is attached as Exhibit 1 to the Declaration of Mónica Balderrama, filed concurrently herewith.

² FedEx Freight, Inc. is referred to as “Defendant” or “FedEx.” Defendant and Plaintiff are collectively referred to as the “Parties.”

³ The operative complaint defines the class period as starting from July 24, 2009 in light of a prior settlement which had an end date of July 23, 2009. April 9, 2013 is the end date the Parties agreed would define the Settlement Class, which is the date the Parties signed the Memorandum of Agreement in this case.

⁴ The release period reaches back the entire applicable 4-year statute of limitations, based on California Business & Professions Code section 17208.

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1 Administration Costs, and the Class Representative
2 Enhancement Payment) which will be allocated to
3 Participating Class Members on a pro-rata basis according to
4 the number of weeks each Class Member worked during the
5 Class Period.

6 (b) Attorneys’ fees of \$256,250 and costs of \$16,000 to Initiative
7 Legal Group APC (“Plaintiff’s Counsel”);

8 (c) A \$3750 payment to the California Labor and Workforce
9 Development Agency (“LWDA”) pursuant to PAGA;

10 (d) Settlement Administration Costs, currently estimated to be
11 \$24,000, to be paid to the mutually agreed upon class action
12 settlement administrator Simpluris, Inc. (“Simpluris” or
13 “Settlement Administrator”); and

14 (e) A Class Representative Enhancement Payment of \$5000 to
15 Plaintiff Eugene Chavez for his services on behalf of the
16 Settlement Class.

17 An objective evaluation of the Settlement confirms that the relief
18 negotiated for the Class is fair, reasonable, and valuable. The Parties negotiated
19 the Settlement at arm’s-length under the guidance of an experienced mediator,
20 and the proposed relief is arguably superior to the relief that the Class might
21 have obtained if Plaintiff had continued to litigate the action.

22 Accordingly, the proposed Settlement satisfies all criteria for preliminary
23 settlement approval and falls well within the range of reasonableness. Plaintiff,
24 therefore, respectfully requests that this Court conditionally certify the
25 Settlement Class for settlement purposes, preliminarily approve the Settlement,
26 and approve the form and distribution of Notice of Proposed Class Action
27 Settlement and Final Fairness Hearing and Approval Hearing and Dispute Form
28 to Class Members.

1 **II. FACTS AND PROCEDURE**

2 **A. Overview of the Litigation**

3 FedEx is a well-known national provider of delivery services to consumers
4 and businesses. From 1991 to August 26, 2011,⁵ FedEx employed Plaintiff as a
5 non-exempt, hourly paid pickup and delivery driver at Defendant's San
6 Bernardino, California terminal location. (*See* Class Action Complaint
7 ["Complaint"], Docket No. 1, Ex. A, ¶ 24.) On August 6, 2012, Plaintiff filed
8 his Complaint in San Bernardino Superior Court against FedEx, Case No.
9 CIVDS1208149, as a proposed wage and hour class action alleging unpaid
10 overtime, unpaid minimum wages, wages not timely paid upon termination, non-
11 compliant wage statements, PAGA violations pursuant to Labor Code sections
12 2698, *et seq.*, and California Business & Professions Code section 17200
13 predicated on the foregoing Labor Code violations as well as on the failure to
14 provide uninterrupted meal and rest periods or premium wages for missed meal
15 and rest periods. (Declaration of Mónica Balderrama ["Balderrama Decl.,"] ¶ 2,
16 Docket 1.)

17 On September 4, 2012, Defendant filed a Notice of Federal Court Removal
18 of Civil Action in the United States District Court for the Central District of
19 California, thus removing the case to this Court. (Balderrama Decl., ¶ 3, Docket
20 1.) Plaintiff filed a Motion to Remand on October 4, 2012 (*id.*, ¶ 4, Docket No.
21 17) which was denied on October 30, 2012. (*Id.*, ¶ 4, Docket No. 22.) On
22 October 15, 2012, Plaintiff filed a Motion for Relief from the Central District of
23 California Local Rule 23-3, which Defendant opposed. (*Id.*, ¶ 5, Docket Nos.
24 20, 27.) On November 19, 2012, this Court issued an Order granting in part
25 Plaintiff's Motion for Relief from Local Rule 23-3, and setting the deadline for
26

27 ⁵ This time period includes the time Plaintiff was employed by Viking
28 Transportation, a predecessor entity of FedEx Freight.

1 Plaintiff to file his Motion for Class Certification on March 18, 2013. (*Id.*, ¶ 5,
2 Docket No. 31.) Based on a subsequent ex parte application and the Parties'
3 joint stipulation, the current deadline to file for class certification is July 15,
4 2013. (Balderrama Decl., ¶ 5)

5 **B. The Parties Conducted Discovery**

6 Plaintiff began discovery in advance of the Rule 26 conference soon after
7 filing his Motion to Remand, and upon receiving Defendant's agreement to
8 conduct early discovery. While Plaintiff's Motion to Remand was pending, and
9 before the Court granted Plaintiff relief from the Central District of California
10 Local Rule 23-3, Plaintiff served interrogatories and requests for production of
11 documents on Defendant. (Balderrama Decl., ¶¶ 6-8.) The purpose of this
12 discovery was to elicit information in support of Plaintiff's anticipated motion
13 for class certification. The discovery sought witness identities, documents
14 reflecting Defendant's employment and compensation policies and practices,
15 documents reflecting Defendant's communications with putative class members
16 regarding its employment and compensation policies and practices including
17 employee handbooks and manuals, job descriptions of class members' positions,
18 payroll records (including times and methods of payments), time records
19 (whether set forth in a computerized timekeeping system, manually-kept records,
20 or otherwise), compensation records (i.e., schedules of rates of pay), wage
21 statements, rest break policies, meal break policies, rest break premium policies,
22 meal break premium policies, overtime policies, and methods of calculating
23 prospective class members' pay rates. (*Id.*, ¶ 8.)

24 Additionally, Plaintiff deposed Defendant's three designated corporate
25 representatives on January 23, 2013, and Defendant deposed Plaintiff on January
26 15, 2013. (Balderrama Decl., ¶ 9.) This discovery and investigation assisted in
27 Plaintiff's realistic assessment of Defendant's potential exposure and the risks of
28 continued litigation.

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C. The Parties Attended Mediation And After Further Production of Evidence, Engaged in Continued Settlement Negotiations

The Parties attended a private mediation of this matter before the Honorable Stephen Sundvold (Ret.) on February 8, 2013. (Balderrama Decl., ¶ 10.) While the mediation was unsuccessful at that time, Judge Sundvold’s efforts laid the groundwork for a possible resolution and the Parties continued to engage in meaningful discussions regarding potential settlement. (*Id.*, ¶ 10.) As part of the ongoing settlement discussions, the Parties discussed that additional documents relating to class records and data would be produced by Defendant to Plaintiff in an effort to bolster the evidentiary foundation for further negotiations. (*Id.*, ¶ 11.)

Accordingly, on February 18, 2013, Defendant provided Plaintiff’s Counsel a list of the class members so that Plaintiff could identify a random sample of 20% for which wage and hour records would be provided for an analysis. (Balderrama Decl., ¶ 19.) Plaintiff’s expert statistician identified the 20% randomly selected sample of class members, and Defendant then provided the corresponding records (time and wage records) for that 20% sample. Plaintiff’s Counsel then provided the random sample of data to an expert statistician for analysis. On February 22, 2013, Defendant also provided additional documents reflecting Defendant’s written meal and rest break policies. (*Id.*)

Based on the analysis of the data and records for the 20% sample performed by the expert consultant, Plaintiff’s Counsel was able to evaluate the apparent magnitude and frequency of Labor Code violations reflected in the records. Based on the analysis of Defendant’s records and an assessment of documents and records previously produced in response to written discovery, and further taking into consideration the anecdotal evidence Plaintiff’s Counsel had already obtained from Plaintiff, Plaintiff’s Counsel was able to complete an

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1 evaluation of both the prospects for certification and the relative value of the
2 claims alleged. Upon the completion of this analysis, an agreement in principle
3 was reached on April 5, 2013, and a Memorandum of Agreement signed on April
4 9, 2013. (*Id.*, ¶ 11.)

5 **D. The Proposed Settlement Fully Resolves The Claims in This**
6 **Case**

7 **1. Composition of the Class**

8 The Settlement stipulates to the certification of a class comprised of
9 approximately 1514 current and former non-exempt and/or hourly paid pickup
10 and delivery drivers employed by Defendant in California from July 24, 2009 to
11 April 9, 2013 (“Settlement Class”). (Settlement ¶ 4.)

12 **2. Settlement Consideration**

13 The Settlement releases only those claims alleged in the complaint.
14 (Settlement ¶ 22.) In exchange, FedEx will pay \$1,025,000, a non-reversionary
15 Class Settlement Amount. (*Id.*, ¶ 7.) The Parties have agreed to the following
16 payments from this fund: (1) \$5000 to Plaintiff as the Class Representative
17 Enhancement Payment; (2) \$3750 to the State of California for the release of
18 PAGA claims; (3) an estimated \$24,000 for Settlement Administration Costs;
19 and (4) attorneys’ fees and costs of \$256,250 and \$16,000, respectively, for
20 Plaintiff’s Counsel Award. The remaining portion will be distributed to Class
21 Members who do not request exclusion from the Settlement. (*Id.*, ¶ 29.)

22 Class Members who do not request exclusion from the settlement will be
23 entitled to monetary payment. (Settlement, ¶¶ 17, 29.) The amount each
24 Participating Class Member receives will be based principally upon the number
25 of weeks that they worked during the Class Period. (*Id.*, ¶ 30.) Defendant will
26 calculate the number of workweeks by calculating the number of weekly pay
27 periods each Class Member was employed from August 6, 2008 to the date upon
28 which the Court grants preliminary approval of this Settlement; subtracting the

1 number of days in which the Class Member was on leaves of absence and/or
 2 vacation (if any) and days on which each Class Member worked exclusively
 3 outside of California (if any). Any Class Member with less than one week of
 4 employment will be credited with one workweek. Every former employee will be
 5 allocated an additional workweek to compensate that employee for releasing his
 6 or her claim for Section 203 waiting time penalties. (*Id.*) Regardless of the
 7 number of Participating Class Members, no amount of the Class Settlement
 8 Amount will revert to Defendant, with each Participating Class Member's share
 9 being proportionally increased to ensure that the entire Net Settlement Amount is
 10 paid out. (*Id.*, ¶ 37.)

11 3. Formula For Calculating Settlement Payments

12 Individual Settlement Payments will be calculated and apportioned from
 13 the Net Settlement Amount based on the number of Workweeks a Participating
 14 Class Member worked during the Class Period. The Settlement Administrator
 15 will calculate the total aggregate number of Workweeks that all Class Members
 16 were employed by Defendant in California and worked during the Class Period
 17 ("Total Workweeks"). The value of each individual Workweek will then be
 18 determined by dividing the proceeds of the Net Settlement Amount by the Total
 19 Workweeks, resulting in the "Workweek Point Value". Individual Settlement
 20 Payment amounts for each Participating Class Member will then be determined
 21 by multiplying the individual Participating Class Member's number of
 22 Workweeks by the Workweek Point Value. The Settlement Administrator will
 23 add one Workweek for Participating Class Members who are no longer
 24 employed by Defendant. The Individual Settlement Payments will be reduced by
 25 any required legal deductions for each Participating Class Member. (Settlement,
 26 ¶ 40.) If there are any timely submitted Requests for Exclusion, the Settlement
 27 Administrator will proportionately increase the Individual Settlement Payments
 28 for each Participating Class Member so that 100% of the Net Settlement Amount

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1 is distributed to the Participating Class Members. (*Id.*, ¶ 37.)

2 The Parties agree that the formula described above is reasonable and that
3 the payments are designed to provide a fair settlement to each Participating Class
4 Member in light of the uncertainties of the compensation alleged to be owed to
5 the Class Members and the calculation of such amounts.

6 **4. Release by Class Limited to Claims in Complaint**

7 The consideration provided by the Class Members is a release of the
8 claims alleged in this matter (and no more). The Class Members will release all
9 wage and hour claims arising from the facts alleged in the Action against
10 Defendant, including: (1) all claims for unpaid overtime pursuant to California
11 Labor Code sections 510 and 1198; (2) all claims for unpaid minimum wages
12 pursuant to Labor Code sections 1194, 1197, and 1197.1; (3) all claims for the
13 failure to timely pay wages upon termination, pursuant to Labor Code sections
14 201, 202, and 203; (4) all claims for the failure to timely pay wages during
15 employment, as they relate to the failure to pay break premiums, overtime,
16 minimum wages pursuant to Labor Code section 204; (5) all claims for
17 inaccurate wage statements, pursuant to Labor Code section 226; (6)
18 incorporated or related claims asserted through Labor Code sections 2698 *et*
19 *seq.*; and (7) claims asserted through California Business and Professions Code
20 sections 17200, *et seq.*, including Labor Code sections 510, 1198, 1194, 1197,
21 1197.1, 226, 201, 202, 203, 204, 226.7, and 512. (Settlement ¶ 22.)

22 Class Members who submit valid and timely Requests for Exclusion will
23 not release any of the Released Claims except all Class Members will be bound
24 by the judgment as to the PAGA claim to be entered upon final approval.
25 (Settlement ¶¶ 17, 22, 49, 51.) The Released Claims also exclude and are not
26 intended to release those claims asserted or brought by Plaintiff in his pending
27 action, *Chavez and Delgado v. FedEx Freight, Inc.*, USDC EDCV 12-02271-
28 TJH. (*Id.*, ¶¶ 22, 65.)

1 **5. Notice to the Class**

2 Plaintiff seeks approval of the Notice of Proposed Class Action Settlement
3 and Final Fairness and Approval Hearing (the “Notice”) and the Dispute Form⁶
4 (collectively, the “Notice Packet”). (Exs. A-B to the Settlement.) The Notice
5 sufficiently apprises the Class Members of the claims at stake in the case; the
6 terms of the settlement; the process for obtaining a portion of the Settlement; the
7 process for opting-out of the Settlement; and the means by which to object to the
8 Settlement.

9 Defendant will provide the Settlement Administrator each Class Member’s
10 full name, most recent mailing address, Social Security number, dates of
11 employment, and the respective Workweeks that each Class Member worked in
12 California during the Class Period. (Settlement ¶¶ 3, 43.) Defendant will also
13 provide the Settlement Administrator with Class Member telephone numbers on
14 an individual basis and upon request when the need arises as determined by the
15 Settlement Administrator. (*Id.*, ¶ 3.) To maximize receipt of the Notice Packet,
16 the Settlement Administrator will verify the last known address for each Class
17 Member through a generally utilized, national address update database, such as
18 the National Change of Address Database. (*Id.*, ¶¶ 42(c), 45.)

19 Class Members will have 60 days to submit a Dispute Form or a Request
20 for Exclusion.⁷ (Settlement ¶ 26.) Class Members need not submit a claim form

21 _____
22 ⁶ The Dispute Forms are for Class Members to use in the event they
23 dispute the dates of service and workweek information set forth in the Dispute
24 Form.

25 ⁷“Request for Exclusion” means a timely letter submitted by a Class
26 Member indicating a request to be excluded from the Settlement. The Request
27 for Exclusion must: (a) set forth the name, address, telephone number and last
28 four digits of the Social Security Number of the Class Member requesting
exclusion; (b) be signed by the Class Member; (c) be returned by mail to the
Settlement Administrator at the specified address indicated in the Notice Packet;
(d) clearly state that the Class Member does not wish to be included in the
Settlement; and (e) be postmarked on or before the Response Deadline.
(Settlement ¶ 25.)

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1 to participate in this non-reversionary settlement. If any Notice Packets are
2 returned after the first mailing, the Settlement Administrator will attempt to
3 obtain an updated address and re-mail the Notice Packet. (*Id.*, ¶¶ 26, 42(f), 45.)
4 Those Class Members who receive a re-mailed Notice Packet will have their
5 deadline for submitting Dispute Forms or Requests for Exclusion, or objections
6 extended by at least 15 days to provide sufficient time to exercise their rights.
7 (*Id.*)

8 **III. ARGUMENT**

9 **A. The Proposed Class Action Settlement Should Receive**
10 **Preliminary Approval**

11 **1. Courts Review Class Action Settlements to Ensure That**
12 **the Terms Are Fair, Adequate, and Reasonable**

13 Class action settlements must be approved by the court and notice of the
14 settlement must be provided to the class before the action can be dismissed. *See*
15 *Fed. R. Civ. P. 23(e)(1)(A)*. To protect absent class members’ due process
16 rights, approval of class action settlements involves three steps: (1) preliminary
17 approval of the proposed settlement, including (if the class has not already been
18 certified) conditional certification of the class for settlement purposes; (2) notice
19 to the class providing them an opportunity to exclude themselves; and (3) a final
20 fairness hearing concerning the fairness, adequacy, and reasonableness of the
21 settlement. *See Fed. R. Civ. P. 23(e)(2); Manual for Complex Litigation §*
22 *21.632 (4th ed. 2004)*.

23 The law favors the compromise and settlement of class action suits. *See*
24 *Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *see also*
25 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (endorsing the
26 trial court’s “proper deference to the private consensual decision of the parties”
27 when approving a settlement). “Litigation settlements offer parties and their
28 counsel relief from the burdens and uncertainties inherent in trial. . . . The

1 economics of litigation are such that pre-trial settlement may be more
2 advantageous for both sides than expending the time and resources inevitably
3 consumed in the trial process.” *See Franklin v. Kaypro*, 884 F.2d 1222, 1225
4 (9th Cir. 1989). Thus, the Court must determine whether a settlement is “fair,
5 reasonable, and adequate.” *See Fed. R. Civ. P. 23(e)(1)*.

6 Whereas at the final approval stage the Court must decide whether the
7 parties negotiated a settlement that is fair, reasonable, and adequate to class
8 members, at the preliminary approval stage, the Court need only decide whether
9 the settlement falls within a range of reasonableness possibly meriting final
10 approval (i.e., whether it would be worthwhile to give the class notice of the
11 settlement and proceed with a formal fairness hearing). *See Gautreaux v. Pierce*,
12 690 F.2d 616, 621 n.3 (7th Cir. 1982) (“To determine whether preliminary
13 approval is appropriate, the settlement need only be potentially fair, as the Court
14 will make a final determination of its adequacy at the hearing on Final Approval,
15 after such time as any party has had a chance to object and/or opt out.”); 4
16 Newberg & Conte, § 11.25.

17 If the settlement has no obvious deficiencies, then it falls within the range
18 of possible approval. *See In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186,
19 191 (S.D.N.Y. 2005). In other words, the Court makes only a preliminary
20 determination of the settlement’s fairness, reasonableness, and adequacy,
21 pointing out any settlement terms that are so unacceptable at the outset that a
22 formal fairness hearing would be a waste of time. *See Manual for Complex*
23 *Litigation*, § 21.632; 4 Newberg & Conte, § 11.25.

24 2. The Settlement Was Reached Through Arm’s-Length 25 Bargaining

26 The fairness and reasonableness of a settlement agreement is presumed
27 “where that agreement was the product of non-collusive, arm’s-length
28 negotiations conducted by capable and experienced counsel.” *See In re Netflix*

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1 *Privacy Litig.*, No. 5:11-CV-00379-EJD, 2013 U.S. Dist. LEXIS 37286, *11
2 (N.D. Cal. Mar. 18, 2013). The Settlement was reached after the parties
3 participated in an all-day mediation and several months of subsequent ongoing
4 settlement discussions and the review and analysis of additional documents and
5 data provided by Defendant. (Balderrama Decl., ¶¶ 10-11.)

6 **3. The Settlement Was Based on Facts Uncovered Through**
7 **Investigation, Discovery, and Preparation for Mediation**

8 Plaintiff’s Counsel thoroughly engaged in the discovery process and made
9 use of documents and data provided by FedEx to assess its potential exposure as
10 to Plaintiff’s claims. (Balderrama Decl., ¶¶ 6-11.) Overall, Plaintiff’s Counsel
11 performed an exhaustive investigation into the claims at issue, which included: (1)
12 determining Plaintiff’s suitability as a putative class representative through
13 interviews, background investigations, and analyses of his employment files and
14 related records; (2) evaluating Plaintiff’s wage and hour claims; (3) researching
15 similar wage and hour class actions regarding the claims brought in this case, the
16 nature of the positions, and the type of employer; (4) analyzing Defendant’s
17 labor policies and practices; (5) researching settlements in similar cases; (6)
18 conducting valuation analysis of the claims; (7) drafting the motion for class
19 certification (not yet filed); (8) drafting the mediation brief; (9) participating in
20 the mediation; and (10) finalizing the Settlement. (*Id.*, ¶ 7.) The extensive
21 document and data exchanges have allowed Plaintiff’s Counsel to appreciate the
22 strengths and weaknesses of the claims against Defendant and the benefits of the
23 proposed Settlement. (*Id.*)

24 Based on the data and on their own independent investigation and
25 evaluation, Plaintiff’s Counsel is of the opinion that this Settlement for the
26 consideration and on the terms set forth in the Settlement Agreement is fair,
27 reasonable and adequate, and is in the best interest of the Settlement Class in
28 light of all known facts and circumstances, including the risk of significant delay

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1 and uncertainty associated with litigation, various defenses asserted by FedEx,
2 and potential appellate issues. (Balderrama Decl., ¶ 12.)

3 **4. Counsel Is Experienced In Similar Litigation**

4 The Parties were represented by experienced counsel throughout the
5 negotiations resulting in this Settlement. Plaintiff was represented by Initiative
6 Legal Group APC, accomplished counsel experienced in litigating wage and
7 hour class actions. Initiative regularly litigates wage-and-hour claims through
8 certification and on the merits. Since 2005, Initiative has successfully certified
9 over 15 class actions by way of contested motions. (Balderrama Decl., ¶ 16.)
10 Initiative has received final approval of settlements totaling tens of millions of
11 dollars on behalf of hundreds of thousands of employees and consumers. (*Id.*,
12 ¶ 17.)

13 Defendant is represented by Littler Mendelson, P.C. Littler Mendelson,
14 P.C. is one of the preeminent defense firms in the country, with a renowned
15 wage and hour and employment defense practice.

16 **5. The Settlement Was Achieved After Evaluating the**
17 **Strengths of Plaintiff’s Case and the Risks, Expense,**
18 **Complexity, and Likely Duration of Further Litigation**

19 In assessing the probability and likelihood of success, “the district court’s
20 determination is nothing more than an amalgam of delicate balancing, gross
21 approximations, and rough justice.” *Officers for Justice v. Civil Serv. Comm’n*,
22 688 F.2d 615, 625 (9th Cir. 1982) (internal quotation marks omitted). The
23 Courts have “long deferred to the private consensual decision of the parties” in
24 settling a case such as this. *See Hanlon*, 150 F.3d at 1027. Courts have stated
25 that in approving a settlement, their focus does not lay with the individual
26 components of the settlement, but rather the settlement is viewed in its entirety in
27 order to evaluate its fairness. *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996).
28 And the Courts also consider the facts of the settlement “in the light most

1 favorable to the settlement.” *Id.* The value of class-wide claims is dependent, in
 2 large part, on the size of a class. Prior to certification, there is no actual class,
 3 only a prospective class, and arguably, only an “alleged” group of similarly
 4 aggrieved individuals. The value of the claims asserted on behalf of a class is
 5 estimated by assuming maximum damages in the aggregate and then discounting
 6 by credible defenses, the chances of the court denying certification, the chances
 7 of losing at trial, and the chances of winning at trial but losing on appeal.
 8 Naturally, if the court denies certification, there is no class and the value of the
 9 case falls drastically. To the extent any value remains, it derives almost entirely
 10 from the value of a plaintiff’s individual claims—hardly enough to merit
 11 litigation in their own right, even if only in small claims court.

12 As set forth in detail in the supporting declaration, Plaintiff’s Counsel
 13 evaluated the strengths of the asserted claims and assessed the range of potential
 14 outcomes of the litigation at trial, in light of the risks, expense, complexity and
 15 ongoing duration of the litigation. The risk of continuing litigation, increased
 16 costs, and passage of a substantial amount of time, weigh heavily in favor of
 17 settlement. *See Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982); *see also*
 18 *Freedman v. Air Line Stewards & Stewardesses Assoc., Local 550, et al.*, 730
 19 F.2d 509, 514 (7th Cir. 1984). Based on that evaluation, Plaintiff’s Counsel
 20 opines that Class Members’ interests would more likely be advanced by
 21 settlement. (Balderrama Decl., ¶¶ 18-31.)⁸

22
 23 ⁸ Based on Plaintiff’s Counsel’s efforts, Class Members stand to receive an
 24 average payment of approximately \$475. (This average gross recovery was
 25 calculated by taking the estimated Net Settlement Amount (\$718,750) and
 26 dividing that by the total number of class members (1514).) The Settlement
 27 represents a substantial recovery for wage-and-hour claims, particularly for a
 28 case such as this, where Defendant asserted compelling defenses to liability.
See, e.g., Aqui v. Sutton Foundation, Inc., Case No. 30-2008-00180062 (Orange
 County Super. Ct.) (average gross recovery of approximately \$445); *Badami v.*
Grassroots Campaigns, Inc., Case No. C 07-03465 JSW (N.D. Cal.) (average
 gross recovery of approximately \$195; finally approved July 11, 2008); *Sandoval*
v. Nissho of Cal., Inc., Case No. 37-2009-00091861 (San Diego County Super.

1 **B. The Proposed PAGA Payment Is Reasonable**

2 Pursuant to the Settlement, \$3750 from the Class Settlement Amount will
3 be paid to the LWDA in connection with the PAGA claim asserted in the
4 complaint. (Settlement ¶ 12.) This result was reached after good-faith
5 negotiation between the Parties. Where PAGA penalties are negotiated in good
6 faith and there is no indication that the amount was the result of self-interest at
7 the expense of other Class Members, such amounts are generally considered
8 reasonable. *See Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 U.S.
9 Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009) (approving a PAGA
10 settlement of 0.3% or \$1500); *see also Nordstrom Com. Cases*, 186 Cal. App.
11 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a
12 settlement which does not allocate any damages to the PAGA claims.”).

13 **C. The Proposed Payment To The Class Representative Is**
14 **Reasonable**

15 Payments to named plaintiffs for their services as class representatives are
16 customary and generally approved. *See, e.g., Van Vranken v. Atl. Richfield Co.*,
17 901 F. Supp. 294, 300 (N.D. Cal. 1995); *Cellphone Termination Fee Cases*, 186
18 Cal. App. 4th 1380, 1393 (2010); *Bell v. Farmers Ins. Exchange*, 115 Cal. App.
19 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their
20 efforts in bringing the case); *Stevens v. Safeway, Inc.*, Case No. 05-01988, 2008
21 U.S. Dist. LEXIS 17119 (C.D. Cal. Feb. 25, 2008) (\$20,000 and \$10,000 to two
22 class representatives); *In Re Janney Montgomery Scott LLC Financial*
23 *Consultant Litig.*, Case No. 06-3202, 2009 U.S. Dist. LEXIS 60790 (E.D. Pa.
24 July 16, 2009) (\$20,000 each to three class representatives). The incentive

25 _____
26 Ct.) (average gross recovery of approximately \$145; filed June 16, 2009);
27 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County
28 Super. Ct.) (average gross recovery of approximately \$120); *Sorenson v.*
PetSmart, Inc., Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average gross
recovery of approximately \$60; finally approved December 17, 2008).

1 award should be approved so long as it is not so high [as] to create a conflict of
2 interest between the representative and class members, or be divorced from the
3 actual value the representative provided to the action. *See Radcliffe v. Experian*
4 *Info. Solutions, Inc.*, 2013 U.S. App. LEXIS 7932 (9th Cir. Cal. Apr. 22, 2013).

5 Here, Eugene Chavez assisted Plaintiff's Counsel in numerous ways, such
6 as: (1) providing documents to assist Plaintiff's Counsel in their investigation
7 and prosecution of this case; (2) extensively preparing for and attending a full
8 day of deposition requiring multiple days of travel between Hesperia and
9 Century City; (3) communicating with Plaintiff's Counsel and being "on-call"
10 for the entire day of the mediation to evaluate and approve a potential settlement
11 in the event a settlement was reached; (4) allowing his personnel files, including
12 personal financial information relating to his pay, to be divulged during the
13 course of the lawsuit; (5) subjecting himself to reputational risk by initiating a
14 lawsuit against his former employer; and (6) regularly consulting with Plaintiff's
15 Counsel throughout litigation to stay apprised of developments in the case.
16 (Balderrama Decl., ¶ 14.)

17 Without Plaintiff's participation in this case, Class Members might not
18 have received any benefit from this Settlement. Based on his services to the
19 Class, Plaintiff's Counsel fully endorses the \$5000 Class Representative
20 Enhancement Payment. (Balderrama Decl., ¶ 14.)

21 **D. Plaintiff's Counsel's Fees And Costs Are Reasonable**

22 The purpose of an attorneys' fee award in class action litigation is to
23 reward counsel who took the risk of non-payment and invested in a case that
24 achieved a substantial positive result for the class. California courts routinely
25 award attorneys' fees equalling one-third or more of the potential value of the
26 common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008)
27 ("Empirical studies show that, regardless whether the percentage method or the
28 lodestar method is used, fee awards in class actions average around one-third of

1 the recovery.”). Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in
 2 Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies,
 3 Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action
 4 litigation nationwide have come to a similar conclusion that a one-third fee is
 5 consistent with market rates). In the Ninth Circuit, 25 percent is the
 6 “benchmark” award in class action settlements. *See Torrasi v. Tucson Elec.*
 7 *Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993).

8 Here, Plaintiff’s Counsel is seeking 25% in fees. At final approval,
 9 Plaintiff will seek Court-approval of attorneys’ fees of \$256,250 (one-fourth of
 10 the Class Settlement Amount) and costs of \$16,000. (Settlement ¶ 20.)

11 **E. Conditional Class Certification Is Appropriate for Settlement**
 12 **Purposes**

13 **1. The Proposed Class Meets the Requirements of Rule 23**

14 Before granting preliminary approval of the Settlement, the Court should
 15 determine that the proposed settlement class meets the requirements of Rule 23.
 16 *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex
 17 Litigation, § 21.632. An analysis of the requirements of Rule 23(a) and 23(b)(3),
 18 commonly referred to as numerosity, commonality, typicality, adequacy,
 19 predominance, and superiority, shows that certification requirements can be met
 20 here.

21 **2. The Proposed Class Is Sufficiently Numerous and**
 22 **Ascertainable**

23 The numerosity requirement is met where “the class is so numerous that
 24 joinder of all members is impracticable.” *See Fed. R. Civ. P. 23(a)(1)*.
 25 Generally, courts will find a class sufficiently numerous if it consists of 40 or
 26 more members. *See, e.g., Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d
 27 1114, 1121 (E.D. Cal. 2009) (numerosity is presumed at a level of 40 members);
 28 *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995)

1 (same); *Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333 (7th
 2 Cir. 1969) (same); *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D.
 3 Cal. 1998) (same); *Krzesniak v. Cendant Corp.*, No. C 05-05156 MEJ, 2007 U.S.
 4 Dist. LEXIS 47518, *19 (N.D. Cal. June 20, 2007) (same).

5 Here, the proposed Settlement Class consists of approximately 1514
 6 persons who were employed by FedEx within the state of California as non-
 7 exempt and/or hourly paid pickup and delivery drivers during the period from
 8 July 24, 2009 to April 9, 2013.

9 **3. There Are Questions of Law and Fact that Are Common**
 10 **to the Class Which Predominate Over Individual Issues**

11 The second Rule 23(a) requirement is commonality, which is satisfied “if
 12 there are questions of law or fact common to the class.” *See* Fed. R. Civ. P.
 13 23(a)(2). The “commonality requirement has been ‘construed permissively,’ and
 14 its requirements deemed minimal.” *See Estrella v. Freedom Fin’l Network*, 2010
 15 U.S. Dist. LEXIS 61236 (N.D. Cal. 2010) (quoting *Hanlon v. Chrysler Corp.*,
 16 150 F.3d 1011, 1019-1020 (9th Cir. 1998)). Common claims were found to
 17 predominate where a company-wide policy governed how employees spent their
 18 time or how they got paid. *See, e.g., Wright v. Linkus Enterprises, Inc.*, 259
 19 F.R.D. 468, 473 (E.D. Cal. 2009) (finding predominance, despite minor factual
 20 difference between individual class members, where the case involved “alleged
 21 policies that required class members to work without compensation, meal and rest
 22 periods, and/or reimbursement for expenses.”).

23 Here, Plaintiff and prospective Class Members seek identical remedies for
 24 Defendant’s alleged wage and hour violations. Defendant’s uniform policies and
 25 practices give rise to predominant common questions of fact and law including
 26 whether Defendant systematically pressured or required Class Members to work
 27 off-the-clock; whether Defendant systematically failed to pay legally required
 28 overtime when Class Members worked over eight (8) hours per day, over twelve

1 (12) hours a day, and/or over forty (40) hours per week; whether Defendant’s
 2 practices resulted in it paying Class Members less than the minimum wage;
 3 whether Defendant provided Labor Code compliant meal and rest breaks, or
 4 pressured or required them to work during meal periods without compensation;
 5 whether Defendant failed to pay Class Members all wages due during or upon
 6 termination of their employment; whether Defendant’s wage reporting uniformly
 7 failed to comply with Labor Code section 226(a); and whether Defendant
 8 engaged in an unfair business practice in violation of Business and Professions
 9 Code sections 17200 *et seq.*

10 “In addition to meeting the conditions imposed by Rule 23(a), the parties
 11 seeking class certification must also show that the action is maintainable under
 12 Fed. R. Civ. P. 23(b)(1), (2) or (3).” *See Hanlon*, 150 F.3d at 1022. Here,
 13 common issues predominate over individual issues because they arise from the
 14 same factual basis and are based on the same legal theories. All Class Members
 15 were subject to the same written policies, including blanket meal period waivers,
 16 the same timekeeping system, similar job demands making deliveries, and trying
 17 to meet delivery and pickup schedules.

18 Likewise, the fact that the Settlement affords all Class Members an equal
 19 opportunity to obtain compensation for identical claims via a standardized
 20 settlement process provides further support for the conclusion that common
 21 issues of law and fact predominate and that the claims are amenable to class-
 22 wide resolution. *See Amchem Products, Inc. v. Windsor*, 521 U.S. at 619
 23 (rejecting the Third Circuit’s holding that the requirements of Rule 23 “must be
 24 satisfied without taking into account the settlement,” and finding instead that
 25 “settlement is relevant to a class certification.”).

26 **4. Plaintiff’s Claims Are Typical of the Proposed Settlement** 27 **Class**

28 “Like the commonality requirement, the typicality requirement is

1 ‘permissive’ and requires only that the representative’s claims are ‘reasonably
2 co-extensive with those of absent class members; they need not be substantially
3 identical.’” *See Hanlon*, 150 F. 3d at 1020. In determining whether typicality is
4 met, the focus should be on the defendants’ conduct and plaintiff’s legal theory,
5 not the injury caused to the plaintiff. *See Lozano v. AT&T Wireless Services,*
6 *Inc.*, 504 F.3d 718, 734 (9th Cir. 2007). Thus, typicality is “satisfied when each
7 class member’s claim arises from the same course of events, and each class
8 member makes similar legal arguments to prove the defendant’s liability.” *See*
9 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol v.*
10 *Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)).

11 Plaintiff’s wage and hour claims here are typical of the wage and hour
12 claims of the whole class because they arise from the same factual basis and are
13 based on the same legal theories as those applicable to the other Class Members.
14 Plaintiff was employed by Defendant as a pickup and delivery driver, which is a
15 non-exempt, hourly paid position, from 1991 to August 26, 2011, at Defendant’s
16 San Bernardino terminal location. Plaintiff alleges that he performed work off-
17 the clock for which he was not paid, that Defendant failed to provide him with
18 proper meal and rest breaks while on deliveries, and failed to properly
19 compensate him for missed, late, or interrupted meal and rest breaks. Like all
20 putative class members, Plaintiff also alleges that Defendant provided him with
21 wage statements that lacked information required by California Labor Code
22 sections 226(a)(2) and 226(a)(9).

23 **5. Plaintiff and Plaintiff’s Counsel Will Adequately**
24 **Represent the Interests of the Proposed Settlement Class**

25 The final Rule 23(a) requirement asks whether “the representative parties
26 will fairly and adequately protect the interests of the class.” *See Fed. R. Civ. P.*
27 *23(a)(4)*. This requirement is satisfied if: (1) the proposed representative
28 Plaintiff does not have conflicts of interest with the proposed class, and (2)

1 Plaintiff is represented by qualified and competent counsel. *See Hanlon*, 150
2 F.3d at 1020.

3 Plaintiff's interests are entirely coextensive with the interests of the
4 Settlement Class. Plaintiff was injured by the same systematic company-wide
5 policies or practices which pressured or required other members of the Class to
6 work off the clock, miss meal and rest periods, and he seeks the same relief.
7 Plaintiff has demonstrated his ability to advocate for the interests of the Class by
8 initiating the litigation, undertaking discovery on behalf of Class Members,
9 including being deposed, and regularly conferring with Counsel. (Balderrama
10 Decl., ¶ 14.) Further, Plaintiff's Counsel, Initiative Legal Group APC, has
11 regularly engaged in major complex litigation and has extensive experience in
12 wage and hour class action lawsuits that are similar in size, scope, and
13 complexity to the present case. Plaintiff's Counsel has diligently and
14 competently prosecuted this complex action in a challenging and evolving legal
15 landscape for class actions. (*Id.*, ¶¶ 15-17.)

16 **6. Class Settlement Is Superior to Other Available Means of** 17 **Resolution**

18 Similarly, there can be little doubt that resolving all Class Members'
19 claims through a single class action is superior to a series of individual lawsuits.
20 "From either a judicial or litigant viewpoint, there is no advantage in individual
21 members controlling the prosecution of separate actions. There would be less
22 litigation or settlement leverage, significantly reduced resources and no greater
23 prospect for recovery." *See Hanlon*, 150 F.3d at 1023. Indeed, the terms of the
24 Settlement negotiated on behalf of the Class demonstrates the advantages of a
25 collective bargaining and resolution process.

26 Addressing the allegations through a class action is superior to individual
27 litigation or any alternative methods that may exist. This action was filed
28 precisely because Plaintiff believed those alternatives, such as filing complaints

1 with the Labor Commissioner, would have proven ineffective in addressing the
 2 problem on a class-wide basis. Additionally, although the value of the claims is
 3 not insignificant, the amount in controversy is not nearly enough to incentivize
 4 individual action. *See Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1175
 5 (9th Cir. 2010) (“Where recovery on an individual basis would be dwarfed by the
 6 cost of litigating on an individual basis, this [superiority] factor weighs in favor
 7 of class certification.”). As the class action device provides the superior means
 8 to effectively and efficiently resolve this controversy, and as the other
 9 requirements of Rule 23 are each satisfied, certification of the Settlement Class
 10 proposed by the Parties is appropriate.

11 **F. The Proposed Class Notice Adequately Informs Class Members**
 12 **About The Case And Proposed Settlement**

13 The proposed class settlement notice and settlement administration
 14 procedure satisfy due process. Rule 23(c)(2) requires the Court to direct the
 15 litigants to provide Class Members with the “best notice practicable” under the
 16 circumstances, including “individual notice to all members who can be identified
 17 through reasonable effort.” *See Eisen v. Carlisle & Jacqueline*, 417 U.S. 156,
 18 173, 94 S. Ct. 2140, 2150, 40 L. Ed. 2d 732, 746 (1974). Under Rule 23(c)(2),
 19 notice by mail provides such “individual notice to all members.” *Id.* Where the
 20 names and addresses of Class Members are easily ascertainable, individual
 21 notice through the mail constitutes the “best notice practicable.” *Id.* at 175.

22 The Notice of Proposed Class Action Settlement, jointly drafted and
 23 agreed upon by the Parties, provides Settlement Class Members with all required
 24 information so that each Member may make an informed decision regarding his
 25 or her participation in the Settlement. The Notice provides information
 26 regarding the nature of the lawsuit; a summary of the substance of the settlement
 27 terms; the class definition; the deadlines by which Class Members must submit
 28 objections or requests for exclusion; the date for the final approval hearing; the

1 formula used to calculate settlement payments; the proposed amount of
 2 Plaintiff’s Enhancements Payment; the proposed amount of Attorneys’ Fees and
 3 Costs; the PAGA allocation and the binding effect of a PAGA judgment; a
 4 statement that the Court has preliminarily approved the settlement; and a
 5 statement that Class Members will release the Released Claims unless they opt
 6 out. Accordingly, the Notice satisfies the requirements of Rule 23(c)(2).

7 The Dispute Form will inform each member of the Settlement Class of the
 8 number of Workweeks the Class Member worked during the Class Period. The
 9 Dispute Form will also include the estimated amount that the Participating Class
 10 Member will receive, and space to indicate whether the Class Member disagrees
 11 regarding the number of workweeks stated.

12 In summary, the Notice and Dispute Form summarize the proceedings and
 13 the terms and conditions of the Settlement in an informative and coherent
 14 manner, complying with the statement in Manual for Complex Litigation, supra,
 15 that “the notice should be accurate, objective, and understandable to Class
 16 Members. . . .” See Manual for Complex Litigation, Third (Fed. Judicial Center
 17 1995) (“Manual”) § 30.211. Accordingly, the Notice Packet complies with the
 18 standards of fairness, completeness, and neutrality required of a settlement class
 19 notice disseminated under authority of the Court. See Rule 23(c)(2) and (e);
 20 Manual §§ 8.21, 8.39; Manual §§ 30.211, 30.212.

21 The Parties have agreed to use Simpluris, Inc. as the Settlement
 22 Administrator. Within fourteen calendar days of preliminary approval by the
 23 Court, FedEx will provide to the Settlement Administrator a complete list of all
 24 Settlement Class Members (“Class List”). (Settlement ¶ 3.) The Class List will
 25 include each Class Member’s full name; most recent mailing address, Social
 26 Security Number, dates of employment, and the respective number of Workweeks
 27 that each Class Member worked in California during the Class Period. (*Id.*)
 28 Defendant will provide the Settlement Administrator with Class Member

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1 telephone numbers on an individual basis upon request when the need arises as
2 determined by the Settlement Administrator. (*Id.*)

3 The Settlement Administrator will mail the Class Notice, together with the
4 Dispute Form (collectively “Notice Packet”), to all Class Members via first class
5 United States mail. (Settlement ¶ 44.) Before mailing the Notice Packets, the
6 Settlement Administrator will verify the addresses produced by FedEx for each
7 Class Member using the National Change of Address Database, or a similar
8 database. (*Id.*, ¶ 45) In the event Notice Packets are returned as undeliverable,
9 the Settlement Administrator will attempt to locate a current address using,
10 among other resources, a computer/SSN and “skip trace” search to obtain an
11 updated address. (*Id.*) This method was negotiated by the Parties to maximize
12 the outreach and provide notice of the settlement to as many Class Members as
13 possible while ensuring cost effective administration of the Settlement.

14 The last step in the settlement approval process is the Final Approval
15 Hearing, at which time the Court may hear all evidence and arguments necessary
16 to evaluate the Settlement. At the Final Approval Hearing, proponents of the
17 Settlement may explain and describe its terms and conditions and offer
18 arguments in support of settlement approval. Class Members may be heard in
19 support of or in opposition to the Settlement. The Parties tentatively request that
20 this hearing be held on or about December 2, 2013.

21 **IV. CONCLUSION**


22 The Parties have negotiated a fair and reasonable settlement of a case that
23 provides relief that likely would never have been realized but for this class
24 action. Accordingly, Plaintiff respectfully requests the Court preliminarily
25 approve the Settlement; conditionally certify the Settlement Class; direct that the
26 Notice Packet be mailed to Class Members; preliminarily approve the PAGA
27 Payment, the Class Representative Enhancement Payment, the Settlement
28 Administration Costs, and Plaintiff’s Counsel’s Award; appoint Plaintiff as Class

1 Representative; appoint Initiative Legal Group as Class Counsel; and appoint
2 Simpluris as the Settlement Administrator. Additionally, the Parties request the
3 Court set a Final Approval hearing for December 2, 2013, or the earliest
4 available date that the Court’s calendar will accommodate.

5
6 Dated: June 24, 2013

Respectfully submitted,

Initiative Legal Group APC

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9 By: 

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G. Arthur Meneses

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