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8 Attorneys for CHRISTIAN BRINK and DAVID MAIER
9 on behalf of themselves and all others similarly situated,
10 and on behalf of the general public.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF TULARE**

13 CHRISTIAN BRINK and DAVID
14 MAIER on behalf of themselves and all
15 others similarly situated, and on behalf of
16 the general public,

17 Plaintiffs,

18 v.

19 CENTRAL VALLEY AUTO
20 TRANSPORT, INC.; and DOES 1-100;

21 Defendants.

Case No. VCU274266

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING
OF FINAL APPROVAL HEARING DATE**

Date: January 20, 2022

Time: 8:30 a.m.

Judge: Hon. David Mathias

Dept.: 1

Complaint Filed: June 6, 2018

Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative
3 class in this matter. I am duly admitted to practice before all the courts of the state of
4 California. The following facts are within my personal knowledge and, if called to testify,
5 I could and would competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor
8 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class
9 actions and cases alleging violations of the Private Attorneys General Act of 2004
10 (“PAGA”).
- 11 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior
12 Court, Case No. GIC834348, which was the underlying case in the California Supreme
13 Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004
14 (2012), in which the California Supreme Court delineated the scope of employer
15 obligations to provide, and employee rights to receive, meal and rest periods under
16 California law.
- 17 5. I wrote an Amicus brief on behalf of Consumer Attorneys of California (“CAOC”) in the
18 recent decision by the California Supreme Court in *Augustus v. ABM Security Services,*
19 *Inc.*, 2 Cal.5th 257 (2016) (rest breaks must be duty-free and time spent being on call during
20 rest breaks is not considered duty-free).
- 21 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the
22 California Supreme Court in *Williams v. Superior Court*, 3 Cal. 5th 531(2017) (PAGA and
23 wage and hour class action).
- 24 7. My firm has been granted class certification in both state and federal courts.
- 25 8. I am also Plaintiff’s counsel in a host of other class actions involving violations of
26 California’s wage and hour laws. For example, I have been and am involved as counsel for
27 plaintiffs in the following sampling of class action cases involving wage and hour
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1 violations under California law: *Davis v. Apria Healthcare Group* (Case No. 37-2015-
2 00007743); *Norona v. B&G Delivery System, Inc.* (Case No. RG1577005); *Perez v. City*
3 *of San Diego* (Case No. 37-2014-00016621); *Cuellar-Ramirez v. US Foods, Inc.* (Case No.
4 RG15770766); *Peron v. The Vons Companies, Inc.* (Case No. 15-cv-01567-L-JMA);
5 *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific*
6 *Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation,*
7 *Inc.* (Case No. RG15770011); *Eure v. Dotson v. Asbury Environmental Services* (Case No.
8 RG16842620); *Spikes v. Bear Trucking, Inc.* (Case No. 16CECG02389); *Montes v. Coram*
9 *Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez*
10 *v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach &*
11 *Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central*
12 *California, Inc.* (Case No. 9000052).

13 9. This case was filed by Plaintiff Christian Brink in the Tulare County Superior Court on or
14 about June 6, 2018. On or about December 13, 2018, Plaintiff Christian Brink filed a First
15 Amended Complaint adding Plaintiff David Maier as a Plaintiff in this action and adding
16 a cause of action pursuant to the Private Attorneys General Act of 2004. On or about
17 August 22, 2019, the Parties entered into and filed a stipulation to allow Plaintiffs to file a
18 proposed Second Amended Complaint in Tulare County Superior Court adding, among
19 other things, a “Misclassification Class,” and dismissing claims for overtime and recovery
20 periods.

21 10. On August 30, 2019, Defendant removed this action to the Eastern District of California
22 under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332 et seq., alleging,
23 among other things, that the majority of the newly alleged Misclassification Class are
24 residents of states other than California. Pursuant to the Parties’ stipulation and the United
25 States Magistrate Judge’s subsequent order, on January 30, 2020, Plaintiffs filed their
26 Second Amended Complaint in the Eastern District of California. Defendant filed its
27 Answer to the Second Amended Complaint on February 28, 2020. The operative complaint
28

1 alleges causes of action for: 1) Failure to Pay All Straight Time Wages; 2) Failure to
2 Provide Meal Periods; 3) Failure to Authorize and Permit Rest Periods; 4) Knowing and
3 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; 5)
4 Failure to Pay All Wages Due at the Time of Termination of Employment; 6) Violation of
5 Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.); 7) Failure to
6 Reimburse/Illegal Deductions; and 8) Violations of the private Attorneys General Act,
7 Labor Code §2699, et seq. (“PAGA”).

8 11. The Parties agreed to conduct informal discovery on the issue of federal court jurisdiction
9 and agreed on a *Belaire West* notice to be sent to Class Members. In determining who to
10 send the *Belaire West* notice to, the Parties met and conferred further regarding the scope
11 of the proposed Misclassification Class. During these meet and confer efforts, Plaintiffs
12 agreed that the putative Misclassification Class is limited to individuals, as opposed to
13 entities, who directly signed a contract with Defendant and have driven for Defendant
14 within the State of California, excluding those subhaulers who contracted with Defendant
15 through a dispatch service. As such, the Parties agreed to remand the case back to the Tulare
16 County Superior Court.

17 12. After filing, the Parties engaged in extensive discovery and investigation. Plaintiffs
18 propounded three sets of requests for production of documents and two sets of special
19 interrogatories on Defendant. The responses to this discovery led to extensive meet and
20 confer efforts. The discovery and resultant meet and confer efforts led to Defendant
21 producing over 4,000 pages of documents. These documents included, but are not limited
22 to, Plaintiffs’ personnel files, driving logs for employees and independent contractors,
23 agreements entered into between independent contractors and Defendant, payroll
24 summaries, wage statements, and Defendant’s wage and hour policies. Plaintiffs also took
25 the deposition of Defendant’s Person Most Qualified witness on August 5, 2020.

26 13. On February 19, 2019, the Parties attended an all-day mediation with mediator Jeff Krivis.
27 On August 11, 2020, the Parties attended a second all-day mediation with mediator Justice
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1 Steven M. Vartabedian (Ret.). Both of these mediations were unsuccessful. Thereafter, the
2 Parties continued their settlement discussions. As a result of these continued settlement
3 discussions, the Parties agreed to resolve the claims asserted by Plaintiffs. The Parties
4 executed a Memorandum of Understanding, dated April 2, 2021. Defendant then provided
5 financial documents to Plaintiffs for Plaintiffs' financial expert to review and analyze.
6 After Plaintiffs' expert's analysis was complete, the Parties then met and conferred over
7 all the terms of the settlement and finalized their agreement in the Parties' Agreement. The
8 Parties' Agreement is attached hereto as **Exhibit 1**.

9 14. Based on the data provided by Defendant, Plaintiffs have determined that approximately
10 105 Independent Contractor Class Members worked approximately 8,862 workweeks
11 during the Class Period.

12 15. Plaintiffs allege that Defendant failed to reimburse Independent Contractor Class Members
13 for all business expenses. Based upon the settlement sheets provided by Defendant,
14 Plaintiffs estimate that Independent Contractor Class Members are owed approximately
15 \$19,351 per month in reimbursements. This equates to approximately \$4,837.75 per week
16 owed in reimbursements. As such, if Plaintiffs were to prevail on this claim, Plaintiffs and
17 the Independent Contractor Class Members would be entitled to the following maximum
18 potential damages: \$42,872,140 ($\$4,837.75 \text{ per week} \times \$8,862 \text{ workweeks} =$
19 $\$42,872,140.50$).

20 16. Plaintiffs also allege that Defendant failed to provide accurate itemized wage statements.
21 The statute of limitations for Plaintiffs' wage statement claim is one year. Under California
22 Labor Code § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for
23 the initial pay period in which a violation occurs and one hundred dollars (\$100) per
24 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty
25 of four thousand dollars (\$4,000). If Plaintiffs were to prevail on this claim and assume
26 that each employee who worked within the statute of limitations was entitled to the
27 maximum penalty, Plaintiffs and the Independent Contractor Class Members would be
28

1 entitled to the following maximum potential damages: \$76,000 (\$4,000 maximum penalty
2 x approximately 19 drivers in the statute of limitations = \$76,000).

3 17. Based on the data provided by Defendant, Plaintiffs have determined that approximately
4 139 Company Driver Class Members worked approximately 14,058 workweeks during the
5 Class Period. This equates to approximately 56,232 shifts worked by Company Driver
6 Class Members.

7 18. Plaintiffs allege that Defendant failed to pay for all time worked, namely, hours in excess
8 of eight in a shift or forty in a week. If Plaintiffs were to prevail on this claim for the entire
9 class period, Plaintiffs and the Company Driver Class Members would be entitled to the
10 following maximum potential damages: \$5,617,576 (56,232 shifts x 3.33 hours of unpaid
11 time per shift x \$30 per hour = \$5,617,576.80).

12 19. Plaintiffs also allege that Defendant failed to provide accurate itemized wage statements.
13 If Plaintiffs were to prevail on this claim and assume that each employee who worked
14 within the statute of limitations was entitled to the maximum penalty, Plaintiffs and the
15 Company Driver Class Members would be entitled to the following maximum potential
16 damages: \$160,000 (\$4,000 x approximately 40 employees in the statute of limitations =
17 \$160,000).

18 20. Plaintiffs and the Company Driver Class Members may also be entitled to waiting time
19 penalties. Plaintiffs calculate the potential maximum exposure under their waiting time
20 penalties cause of action as \$917,730 (approximately 90 former employees within the
21 three-year statute of limitations x 30 days x 11.33 hours average shift length x \$30 per hour
22 = \$917,730).

23 21. Plaintiffs also seek PAGA penalties. Plaintiffs allege that Defendant has four (4) violations
24 – failure to reimburse for business expenses, failure to pay all wages owed, inaccurate wage
25 statements, and waiting time penalties – of the California Labor Code sections which give
26 rise to PAGA penalties. The statute of limitations for PAGA violations go back one year.
27 There are approximately 59 Aggrieved Employees. Plaintiffs calculate Defendant's
28

1 exposure under PAGA as follows: \$2,360,000 (59 Aggrieved Employees x \$100 x 4 PAGA
2 violations x 100 pay periods = \$2,360,000).

3 22. Thus, not taking into account any of its defenses or arguments, Defendant’s total exposure
4 if Plaintiffs were successful in their core claims as to the Independent Contractor Class
5 Members would be approximately \$42,948,140 [\$42,872,140 (failure to reimburse for
6 business expenses exposure) + \$76,000 (wage statement exposure) = \$42,948,140]. In
7 addition, not taking into account any of its defenses or arguments, Defendant’s total
8 exposure if Plaintiffs were successful in their core claims as to the Company Driver Class
9 Members would be approximately \$6,695,306 [\$5,617,576 (unpaid wages exposure) +
10 \$160,000 (wage statement exposure) + \$917,730 (waiting time penalties exposure) =
11 \$6,695,306]. If all of Plaintiffs’ claims are successful, they may also be entitled to PAGA
12 penalties in the maximum amount of \$2,360,000.

13 23. In light of the risks Plaintiffs’ claims faced, Plaintiffs and their Counsel believe that the
14 settlement amount of \$1,250,000 – **with an average settlement share amount to**
15 **Independent Contractor Class Members estimated at approximately \$5,244.76 and**
16 **an average settlement share amount to Company Driver Class Members estimated at**
17 **approximately \$990.47** – is a reasonable and fair settlement amount.

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

20
21 Dated: January 6, 2022

MARA LAW FIRM, PC

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23 

24 David Mara, Esq.
25 Representing Plaintiffs CHRISTIAN BRINK and
26 DAVID MAIER on behalf of themselves and all
27 others similarly situated, and on behalf of the general
28 public