SHANNON LISS-RIORDAN (State Bar No. 310719)
(sliss@llrlaw.com)
THOMAS FOWLER, *pro hac vice*
(tfowler@llrlaw.com)
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801

Attorneys for Plaintiff RAEF LAWSON

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAEF LAWSON, in his capacity as Private Attorney General Representative,

Plaintiff,

v.

GRUBHUB HOLDINGS INC. and GRUBHUB INC.,

Defendants

Case No. 15-cv-05128 JSC

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Judge: Hon. Jacqueline Scott Corley
Action Filed: September 23, 2015
Hearing: October 2, 2025
Time: 10:00 AM PT
Courtroom: 8

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, on October 2, 2025, or as soon thereafter as the matter may be heard before the Honorable Jacqueline Scott Corley, in Courtroom F of the United States District Court, Northern District of California, located at 450 Golden Gate Avenue, 15th floor, San Francisco, California 94102, Plaintiff Raef Lawson, individually and on behalf of all others similarly situated, will, and hereby does move for the Court pursuant to Federal Rule of Civil Procedure 23 and 29 U.S.C. § 216(b) for an order:

(1) Preliminarily approving the Settlement Agreement between Plaintiff Raef Lawson and Defendants GrubHub Holdings Inc. and GrubHub Inc. (attached as Exhibit 1 to the Declaration of Shannon Liss-Riordan, filed herewith), on the grounds that its terms are sufficiently fair, reasonable, and adequate for notice to be issued to the settlement class;

(2) Certifying the proposed settlement class for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(c);

(3) Approving the form and content of the proposed class notice and claim form (attached as Exhibit 2 to the Declaration of Shannon Liss-Riordan);

(4) Appointing Lichten & Liss-Riordan, P.C. to represent the class as counsel;

(5) Appointing Simpluris as Settlement Administrator;

(6) Scheduling a hearing regarding final approval of the proposed settlement, Class Counsel's request for attorneys' fees and costs, and enhancement payments to the named Plaintiff;

(7) Granting such other and further relief as may be appropriate.

This Motion is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities below, the Declaration of Shannon Liss-Riordan filed concurrently herewith; all supporting exhibits filed herewith; all other pleadings and papers filed in this action; and any argument or evidence that may be presented at or prior to the hearing in this matter.

Dated: August 13, 2025

Respectfully submitted,

RAEF LAWSON, individually and on behalf of all other similarly situated individuals, and in his capacity as Private Attorney General Representative

By his attorneys,

/s/ Shannon Liss-Riordan

Shannon Liss-Riordan (State Bar No. 310719)
Thomas Fowler, *pro hac vice*
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994-5800
Email: sliss@llrlaw.com, tfowler@llrlaw.com

TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES 1

I. INTRODUCTION 1

II. BACKGROUND 1

- A. Litigation History 1
- B. Settlement Negotiations 5
- C. The Settlement Agreement 6
  - 1. Monetary Relief 6
  - 2. Settlement Class Definition 7
  - 3. Released Claims 7
- B. The Proposed Plan of Distribution of Settlement Fund 8

III. ARGUMENT 9

- A. Legal Standard 9
- B. The Court Should Preliminarily Approve the Settlement 10
  - 1. The Settlement is the Product of Informed, Non-Collusive Negotiation 11
  - 2. The Relief Provided for the Settlement Class Is Fair and Adequate 12
    - a. Risks of Further Litigation 13
    - b. Benefit to Drivers 15
  - 3. The Settlement Has No Obvious Deficiencies 16
  - 4. The Settlement Does Not Unfairly Grant Preferential Treatment to Any Settlement Class Members 17
- C. Certification of the Settlement Class Is Appropriate 19
  - 1. Requirements of Fed. R. Civ. P. 23(a) 20
    - a. Numerosity 20
    - b. Commonality 21
    - c. Typicality 22
    - d. Adequacy 22
  - 2. Requirements of Fed. R. Civ. P. 23(b) 23

III. CONCLUSION 24

TABLE OF AUTHORITIES

Cases

Acosta v. Trans Union, LLC
243 F.R.D. 377 (C.D. Cal. 2007) 11

Alberto v. GMRI, Inc.
252 F.R.D. 652 (E.D. Cal. 2008) 19, 23

Barbosa v. Cargill Meat Sols. Corp.,
297 F.R.D. 431 (E.D. Cal. 2013) 17, 20

Barcia v. Contain-A-Way, Inc.
2009 WL 587844 (S.D. Cal. Mar. 6, 2009) 12

Barnes v. The Equinox Grp., Inc.,
2013 WL 3988804 (N.D. Cal. Aug. 2, 2013) 17

Benitez v. W. Milling, LLC,
2020 WL 3412725 (E.D. Cal. June 22, 2020) 16

Brooks v. Lines,
No. C 10-01404 WHA, ECF Nos. 57; 87 ¶ 12 (N.D. Cal.) 19

Campbell v. City of Los Angeles,
903 F.3d 1090 (9th Cir. 2018) 20

Class Plaintiffs v. City of Seattle,
955 F.2d 1268 (9th Cir. 1992) 10

Custom LED, LLC v. eBay, Inc.
2013 WL 6114379 (N.D. Cal. Nov. 20, 2013) 16

Dalton v. Lee Publications, Inc.
270 F.R.D. 555 (S.D. Cal. 2010) 22

Dyer v. Wells Fargo Bank, N.A.,
303 F.R.D. 326 (N.D. Cal. Oct. 22, 2024) 18

Dynamex Operations West, Inc. v. Superior Court
4 Cal. 5th 903 (2018) 3, 4

Estrella v. Freedom Fin'l Network
2010 U.S. Dist. LEXIS 61236 (N.D. Cal. 2010) 21

F.T.C. et al. v. Grubhub Inc. et al.,
Civ. Act. No. 1:24-cv-12923 (N.D. Ill.) 6

Frlekin v. Apple Inc.
8 Cal. 5th 1038 (2020) 3

Glass v. UBS Fin. Servs.,
2007 WL 221862 (N.D. Cal. Jan. 26, 2007) 19

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir.1998) 10, 20, 21, 23

Harris v. Vector Mktg. Corp.,
2011 WL 1627973 (N.D. Cal. Apr. 29, 2011) 9, 10

Hefler v. Wells Fargo & Co.
2018 WL 6619983 (N.D. Cal. Dec. 18, 2018). 10, 11, 12, 17

Hendricks v. StarKist Co.
2015 WL 4498083 (N.D. Cal. July 23, 2015).......... 17

Hernandez v. Dutton Ranch Corp.,
2021 WL 5053476 (N.D. Cal. Sept. 10, 2021) 16

In re Activision Sec. Litig.,
723 F. Supp. 1373 (N.D. Cal.1989) 17

In re Heritage Bond Litig.,
2005 WL 1594403 (C.D. Cal. June 10, 2005) 9, 10

In re Tableware Antitrust Litig.,
484 F. Supp. 2d 1078 (N.D. Cal. 2007) 1, 9, 17

Lawson v. Grubhub, Inc.
13 F.4th 908 (9th Cir. 2021) 3, 21

Lawson v. Grubhub, Inc.
302 F. Supp. 3d 1071 (N.D. Cal. 2018) 2, 3

Lawson v. Grubhub, Inc.,
2017 WL 2951608 (N.D. Cal. July 10, 2017).......... 2

Lawson v. Grubhub, Inc.,
2023 WL 5917405 (N.D. Cal. Sept. 11, 2023) 4

Lawson v. Grubhub, Inc.,
2024 WL 396183 (N.D. Cal. Feb. 1, 2024) 4, 14

Lawson v. Grubhub, Inc.,
665 F. Supp. 3d 1108 (N.D. Cal. 2023) 1, 3, 18, 22

Lusby v. GameStop Inc.,
2015 WL 1501095 (N.D. Cal. Mar. 31, 2015) 16

Magadia v. Wal-Mart Assocs., Inc.,
999 F.3d 668 (9th Cir. 2021) 4

Mancuso v. Tauber,
2016 WL 7647658 (C.D. Cal. May 31, 2016) 13

Nash v. Horizon Freight Systems, Inc.,
2020 WL 7640878 (N.D. Cal. Dec. 3, 2020) 22, 23

Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004) 9

Nielson v. The Sports Authority
2013 WL 3957764 (N.D. Cal. July 29, 2013) 12

Noll v. eBay, Inc.,
309 F.R.D. 593 (N.D. Cal. 2015) 24

O'Connor v. Uber Technologies, Inc.,
2019 WL 1437101 (N.D. Cal. Mar. 29, 2019) 23

Oppenlander v. Standard Oil Co. (Ind.)
64 F.R.D. 597 (D.Colo.1974) 13

People v. Uber Techs., Inc.
56 Cal. App. 5th 266, 270 Cal. Rptr. 3d 290 (2020),
as modified on denial of reh'g (Nov. 20, 2020),
review denied (Feb. 10, 2021) 13

Rodriguez v. West Publishing Corp.,
563 F.3d 948 (9th Cir. 2009) 18

Roman v. Jan-Pro Franchising International, Inc.,
342 F.R.D. 274 (N.D. Cal. 2022) 22

S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations,
48 Cal.3d 341 (1989) 3, 22, 23

Satchell v. Fed. Express Corp.
2007 WL 1114010 (N.D. Cal. Apr. 13, 2007) 11

Smith v. Cardinal Logistics Mgmt. Corp.
2008 WL 4156364 (N.D. Cal. Sept. 5, 2008) 21

Spann v. J.C. Penney Corp.
2016 WL 297399 (C.D. Cal. Jan. 25, 2016) 23

Van Vranken v. Atl. Richfield Co.
901 F. Supp. 294 (N.D. Cal. 1995) 18, 19

Vasquez v. Coast Valley Roofing, Inc.
266 F.R.D. 482 (E.D. Cal. 2010) 16, 23

Vazquez v. Jan-Pro Franchising Int'l, Inc.
478 P.3d 1207 (Cal. 2021) 3

Villalpando v. Exel Direct, Inc.
303 F.R.D. 588 (N.D. Ca. 2014) 20

Villegas v. J.P. Morgan Chase & Co.
2012 WL 5878390 (N.D. Cal. Nov. 21, 2012) 11, 15

Vinh Nguyen v. Radient Pharm. Corp.
2014 WL 1802293 (C.D. Cal. May 6, 2014) 17

Wilson v. Metals USA, Inc.,
2021 WL 516585 (E.D. Cal. 2021) 19

Zolkos v. Scriptfleet, Inc.
2014 WL 7011819 (N.D. Ill. Dec. 12, 2014) 12

Statutes

29 U.S.C. §§ 201 *et seq.* 7, 20

Cal. Bus. & Prof. Code §§ 17200 *et seq.* 7

Cal. Lab. Code § 1194 2

Cal. Lab. Code § 1197 2

Cal. Lab. Code § 1198 2

Cal. Lab. Code § 2699 13

Cal. Lab. Code § 2802 .... 2, 3

Cal. Lab. Code § 510 2

Cal. Lab. Code § 554 2

Cal. Lab. Code §§ 2698 *et seq.* 2, 7, 14, 15

Other Authorities

Alan Wright & Arthur R. Miller, 7AA Fed. Prac. & Proc. Civ. § 1778 (3d ed. 2022) 24

Manual for Complex Litig., Third, § 30.41 (1995).......... 9

Rules

Fed. R. Civ. P. 23 .... 1, 13, 20, 23

Fed. R. Civ. P. 52 3

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure Rule 23, Plaintiff moves this Court for an order preliminarily approving a proposed class action settlement entered into by Plaintiff and Defendants GrubHub Holdings Inc. and GrubHub Inc. (collectively "Defendants" or "GrubHub"). The Settlement follows almost ten years of extremely active and highly contested litigation, which included a bench trial, an appeal heard by the Ninth Circuit, and five total mediations, as well as extended settlement discussions beyond those mediations. The Settlement Agreement is attached as Exhibit 1 to the Declaration of Shannon Liss-Riordan (filed herewith).

As set forth below, the total settlement is for the amount of $24,750,000. The settlement satisfies the standard for preliminary approval – it is undoubtedly within the range of possible approval to justify sending notice to class members and schedule final approval proceedings. See In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). As the Court is aware, this settlement comes after Plaintiff obtained a ruling that he was GrubHub's employee and that GrubHub was liable to him for $65.11 in minimum wage damages. See Lawson v. Grubhub, Inc., 665 F. Supp. 3d 1108, 1116-24 (N.D. Cal. 2023). Even despite this modest recovery on Plaintiff's individual claims, he remained committed to pursuing PAGA penalties on behalf of GrubHub's other drivers in California. As such, the settlement class of approximately 60,000 GrubHub drivers stands to receive a significant recovery.

Thus, the Court should: (1) grant preliminary approval of the Settlement; (2) certify a settlement class for settlement purposes only; (3) approve the manner and forms of notice; (4) appoint Lichten & Liss-Riordan, P.C. to represent the class as class counsel; (5) appoint Simpluris as Settlement Administrator; and (6) establish a timetable for final approval.

II. BACKGROUND

A. Litigation History

This case has been actively litigated for nearly ten years – since September 23, 2015 (Dkt. 1). GrubHub operates a food delivery service that employs many thousands of delivery drivers around the country, including in California, but classifies them as independent contractors. See Lawson v. GrubHub, Inc. et al., 302 F. Supp. 3d 1071, 1073 (N.D. Cal. 2018). GrubHub dispatches delivery drivers throughout the country via an on-demand dispatch system. Id. at 1078–79.

Plaintiff worked as a GrubHub delivery driver from October 2015 to February 2016, delivering food to GrubHub's customers in Los Angeles, California. See id. at 1073. Plaintiff brought claims under the California Labor Code and as a representative action under PAGA, Cal. Lab. Code §§ 2698 *et seq.*, alleging that GrubHub misclassified him and other delivery drivers across California as independent contractors and thereby violated the Labor Code by failing to pay minimum wage (Cal. Lab. Code §§ 1197 and 1194), failing to pay a time-and-a-half overtime premium for hours worked in excess of forty per week or eight per day (Cal. Lab. Code §§ 1194, 1198, 510, and 554), and failing to reimburse for necessary business expenses (Cal. Lab. Code § 2802). Dkt. 41.[1]

After hearing two motions to dismiss, the Court permitted the case to proceed on the operative Second Amended Complaint on June 13, 2016 (Dkt. 64). GrubHub filed a Motion for an Order Denying Class Certification on June 2, 2015, which the Court granted on July 19, 2016 (Dkt. 65), holding that a class could not be certified because nearly all putative class members had entered into arbitration agreements with GrubHub.

Following discovery, GrubHub moved for summary judgment on Plaintiff's employment status, which the Court denied on July 10, 2017. See Lawson v. Grubhub, Inc., 2017 WL 2951608 (N.D. Cal. July 10, 2017).

On June 15, 2017, the Court granted a stipulation by the parties to bifurcate trial in the case into two phases (Dkt. 122). The first phase would address whether Plaintiff was an "aggrieved employee" under PAGA, and the second phase (if it proceeded) would address PAGA penalties for Plaintiff and GrubHub's other California drivers. (Dkt. 122).

---

[1] This case was originally filed in state court, and GrubHub removed it to federal court on November 9, 2015 (Dkt. 1).

The Court presided over a bench trial on Plaintiff's claims from September 5-12, 2017, and issued its decision on February 8, 2018, determining that Plaintiff was properly classified as an independent contractor under the common law test articulated in S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations, 48 Cal.3d 341, 350 (1989). See Lawson v. Grubhub, Inc., 302 F. Supp. 3d 1071 (N.D. Cal. 2018). While Plaintiff's appeal of that decision was pending, the California Supreme Court issued its decision in Dynamex Operations West, Inc. v. Superior Court, 4 Cal. 5th 903 (2018), in which it adopted the Massachusetts ABC test, supplanting Borello. Accordingly, three years later (after the California Supreme Court ruled that Dynamex was retroactive, in a case brought and argued by Plaintiff's counsel, Vazquez v. Jan-Pro Franchising Int'l, Inc., 478 P.3d 1207 (Cal. 2021)), the Ninth Circuit vacated this Court's holding that Plaintiff was properly classified as an independent contractor on September 20, 2021. See Lawson v. Grubhub, Inc., 13 F.4th 908, 916–17 (9th Cir. 2021).

On September 13, 2022, the Court held that the Borello standard applied to Plaintiff's claim for failure to reimburse business expenses under Cal. Lab. Code § 2802 and found that he was properly classified as an independent contractor under that test. (Dkt. 292.)

In order to address the question of whether Plaintiff had been misclassified under the ABC test for the purposes of his minimum wage and overtime claims, the parties submitted motions for judgment on partial findings under Fed. R. Civ. P. 52. On March 30, 2023, the Court held that Dynamex's ABC test applied to Plaintiff's minimum wage and overtime claims and found that he was in fact an employee of Grubhub for purposes of these claims. Lawson v. Grubhub, Inc., 665 F. Supp. 3d 1108, 1116-24 (N.D. Cal. 2023). In so holding, the Court found that GrubHub could not meet Prong B of the ABC test because Plaintiff's work of delivering food was clearly within "the usual course" of Grubhub's business of facilitating food ordering from restaurants. See id. at 1118-24. The Court also held that time when Plaintiff was on-"block", available, and in-network but not performing deliveries was compensable work time under Frlekin v. Apple Inc., 8 Cal. 5th 1038 (2020), and that mileage expenses may be properly deducted from Plaintiff's effective hourly rate calculation. See Lawson, 665 F. Supp. 3d at 1124-

31. The Court concluded that Plaintiff had experienced minimum wage violations in the amount of $65.11 but not overtime violations. See id. at 1131-36.

GrubHub moved the Court to certify its order for interlocutory appeal, which the Court denied on May 30, 2023 (Dkt. 324).

Given that Plaintiff established his status as an aggrieved party for the purposes of his PAGA representative claim, the case proceeded to the PAGA penalty phase. GrubHub moved for partial summary judgment on June 29, 2023 (Dkt. 335), arguing (1) that Plaintiff lacked standing to pursue PAGA penalties for drivers who did not work during the same period he did; and (2) that due process precluded Plaintiff from recovering any PAGA penalties for the period of time before the California Supreme Court issued Dynamex. The Court denied GrubHub's motion for partial summary judgment on September 11, 2023. See Lawson v. Grubhub, Inc., 2023 WL 5917405 (N.D. Cal. Sept. 11, 2023).

Pursuant to the Court's Case Management and Pretrial Order No. 3 (Dkt. 343), Plaintiff then filed a brief (Dkt. 346) addressing his constitutional standing to pursue PAGA penalties for overtime and expense reimbursement claims, given that the Court had not found that he had suffered those violations personally. GrubHub also submitted a brief addressing the period for which the Court should or can impose PAGA penalties (Dkt. 348). Following full briefing on those issues, the Court issued an order on February 1, 2024. See Lawson v. Grubhub, Inc., 2024 WL 396183 (N.D. Cal. Feb. 1, 2024). First, the Court held that Plaintiff lacked Article III standing to pursue PAGA penalties for overtime and expense reimbursement violations, because he had not suffered injury personally, in light of Magadia v. Wal-Mart Assocs., Inc., 999 F.3d 668 (9th Cir. 2021). See Lawson, 2024 WL 396183, at *4. Recognizing that Plaintiff could pursue those penalties for overtime and expense reimbursement violations in state court, the Court stayed the PAGA claim as to those penalties. See id. at *9. Second, the Court rejected GrubHub's argument that Plaintiff lacked standing after April 2017 (at least on the present record). See id. at *6. Third, the Court rejected GrubHub's request to use its discretion to limit PAGA awards to the period prior to April 2017. See id. at *6-8. Fourth, the Court indicated that it did not believe that Plaintiff had Article III standing to pursue PAGA penalties for minimum wage violations that occurred after December 16, 2020, the day Proposition 22 took effect. See id. Nevertheless, the Court provided Plaintiff the opportunity to brief this issue. See id.

On February 21, 2024, Plaintiff filed his brief on Article III standing for the period after Proposition 22's start date (Dkt. 369). On July 23, 2024, the Court issued a decision (Dkt. 385) holding that Plaintiff did not have PAGA standing to seek penalties after Proposition 22's start date, meaning the period for which Plaintiff could seek penalties for minimum wage violations was December 3, 2014, through December 16, 2020.

The parties submitted competing trial plans on November 21, 2024 (Dkts. 395 and 396). The Court set the remedy trial to assess PAGA penalties for April 9 and 10, 2025, with a third day to be scheduled if necessary (Dkt. 410). On April 4, 2025, the parties informed the Court that, following extensive mediation sessions and direct settlement negotiations, the matter had settled in principle. As a result, the Court vacated the remedy trial on April 7, 2025 (Dkt. 416).

B. Settlement Negotiations

Throughout the ten years this case was litigated, the parties mediated five times, including with respected employment mediator Mark S. Rudy on April 11, 2017, with the Honorable Joseph C. Spero on July 11, 2017, and with respected wage-and-hour mediator Tripper Ortman on October 21, 2019, November 30, 2022, and September 13, 2024. (Liss-Riordan Decl. ¶ 11.)

Between September 2023 and December 2024, GrubHub produced hundreds of spreadsheets (including approximately 100 million of lines of data) containing data to allow the parties to estimate the potential PAGA penalties at issue. (Liss-Riordan Decl. ¶ 15.) Throughout 2024, the parties worked to reach agreement as to what the data showed as to GrubHub's potential minimum wage violations and the PAGA penalties that the Court could impose. (Liss-Riordan Decl. ¶¶ 14-19.)

Although the most recent mediation with Tripper Ortman on September 13, 2024, was unsuccessful, the parties continued to negotiate. (Liss-Riordan Decl. ¶¶ 16-19.) In addition to the risks inherent in trial and the likelihood that GrubHub would ultimately appeal the Court's decision that Plaintiff was GrubHub's employee and suffered minimum wage violations, a number of additional risks to Plaintiff's ability to recover on a significant PAGA penalty judgment became apparent in late 2024. (Liss-Riordan Decl. ¶¶ 16-19, 30-35.)

First, in November 2024, GrubHub was acquired for $650 million. (GrubHub 2024 Acquisition Press Release, Exhibit 3 to Liss-Riordan Decl.) This acquisition came in the wake of a prior 2020 acquisition in which GrubHub was valued at $7.3 billion. (GrubHub 2020 Acquisition Press Release, Exhibit 4 to Liss-Riordan Decl.) Thus, by 2024, GrubHub's valuation had declined.

Second, on December 31, 2024, GrubHub entered into a Stipulated Order with the Federal Trade Commission and the State of Illinois in <u>F.T.C. et al. v. Grubhub Inc. et al.</u>, Civ. Act. No. 1:24-cv-12923 (N.D. Ill.). In that Order, GrubHub stipulated to a judgment of $140,000,000. (FTC and GrubHub Stipulated Order, Exhibit 5 to Liss-Riordan Decl.) However, based on GrubHub's inability to pay this amount, the judgment was suspended in exchange for GrubHub's agreement to pay a settlement of $24,800,000. (FTC and GrubHub Stipulated Order, Exhibit 5 to Liss-Riordan Decl.)

In light of these developments and of the parties' continuing efforts to refine the amount of PAGA penalties at issue in this case, the parties agreed in principle to settle this matter for the gross amount of $24,750,000. (Liss-Riordan Decl. ¶ 20.) During the negotiations that led to this agreement, Plaintiff conducted a detailed analysis of GrubHub's financial status and ability to pay. (Liss-Riordan Decl. ¶¶ 14-19.)

C. The Settlement Agreement

1. Monetary Relief

The Settlement Agreement[2] provides that GrubHub will pay $24,750,000 to fully resolve all the claims in this Action. (Settlement Agreement ¶ 4.1, Exhibit 1 to Liss-Riordan Decl.) This

[2] The parties have not yet executed the Settlement Agreement but have agreed on its terms in principle. Upon its full execution, the parties will submit it to the Court in a supplemental filing.

amount is non-reversionary and thus will be paid out in full to the benefit of settlement class members, less the following categories to be paid out of the Total Settlement Amount: claims administration (currently estimated at $260,000), attorneys' fees and costs (which Plaintiff's counsel will request at final approval in the amount of 33.3% of the Total Settlement Amount); service award (in the amount of $100,000 for Plaintiff); and PAGA payment to the LWDA (the settlement allocates $2,000,000 to the PAGA claims, so 75% of this amount would be paid to the LWDA).

2. Settlement Class Definition

The settlement class is defined as any and all individuals who entered into an agreement with Grubhub to use the Grubhub platform as an independent contractor to offer delivery services to customers and who used the Grubhub platform as an independent contractor service provider to accept or complete at least one (1) delivery in California during the Settlement between December 3, 2014, and the time of preliminary approval.

3. Released Claims

If the Court grants final approval of the settlement, the settlement class will be deemed to have released GrubHub from all claims that were asserted in this action or could have been asserted in the action that are based on or reasonably related to the claims alleged in the First Amended Complaint, including Labor Code, UCL, and common law claims stemming from settlement class members' alleged misclassification. (Settlement Agreement ¶ 2.4, Exhibit 1 to Liss-Riordan Decl.) The release also includes claims under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.* Except for named Plaintiff, the release does not provide for release of claims unrelated to the core misclassification and misrepresentation allegations, *e.g.* claims for discrimination, wrongful termination, personal injury, etc. (Settlement Agreement ¶ 2.4, Exhibit 1 to Liss-Riordan Decl.) Thus, although the scope of the release is somewhat broader than the claims asserted in the First Amended Complaint (by, for example, including FLSA claims), it is still narrowly limited to the type of wage-and-hour claims that stem from the misclassification allegations at issue in this case.

B. The Proposed Plan of Distribution of Settlement Fund

Upon preliminary approval by the Court, the third-party Settlement Administrator selected by the parties will email settlement class members the proposed notice and claim form to the last known email addresses, and if the email is not successfully delivered, will mail the proposed notice and claim form to the last known mailing addresses of all settlement class members, as defined by the Settlement Agreement. (Settlement Agreement ¶¶ 6.1-6.11, Exhibit 1 to Liss-Riordan Decl.) The notice informs settlement class members about the allegations in this case and the terms of the settlement. (Proposed Notice, Exhibit 2 to Liss-Riordan Decl.) It informs class members how they can submit a claim to participate in the settlement. (Claims can be submitted online or by mail.) The notice will inform the settlement class members of their right to individually exclude themselves from the settlement or to object to the settlement if they choose, and it will identify the date and time of the final approval hearing.

Individual settlement payments will be distributed to settlement class members in proportion to the total estimated number of miles driven by each driver from the location where a delivery offer was accepted to the location the delivery was dropped off during the relevant time period. No class member who submits a claim will receive less than $25. (Settlement Agreement ¶¶ 5.4, 5.7, Exhibit 1 to Liss-Riordan Decl.) Following final approval, checks would be mailed to all settlement class members who submit a claim form. The settlement agreement provides for GrubHub to pay the initial settlement payment of $20 million within 14 days of the settlement becoming final and an additional payment of $4.75 million to be paid within 180 days of the settlement becoming final). The initial payment will be distributed as soon as practical (no later than 30 days after the settlement becomes final, and the additional payment (along with the value of any checks that remain uncashed – even after reminders are sent to settlement class members whose checks are $100 or more) will be paid to account for any late submitted claims or to resolve any disputes that may arise with respect to the settlement distribution. (Settlement Agreement ¶¶ 2.10, 6.11, Exhibit 1 to Liss-Riordan Decl.) This second payment will be distributed to all settlement class members who submitted claims, in proportion to their initial distributions (unless their residual distribution would be less than $50). (Settlement Agreement ¶ 5.8, Exhibit 1 to Liss-Riordan Decl.) Any remaining unclaimed funds after the final distribution would be distributed to a cy pres beneficiary, Legal Aid at Work. (Settlement Agreement ¶ 5.8, Exhibit 1 to Liss-Riordan Decl.) Thus, the total proceeds of the settlement (less a service award for the Plaintiff, settlement administration costs, the PAGA payment, and attorneys' fees and costs) will be paid out to settlement class members. No portion of the settlement funds will revert to GrubHub.

III. ARGUMENT

A. Legal Standard

Federal Rule of Civil Procedure 23(e) provides that any compromise of a class action must receive Court approval. "Approval under 23(e) involves a two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 525 (C.D. Cal. 2004) citing Manual for Complex Litig., Third, § 30.41 (1995)). A court should grant preliminary approval if the parties' settlement "appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." In re Tableware Antitrust Litig., 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007). "Closer scrutiny is reserved for the final approval hearing." Harris v. Vector Mktg. Corp., 2011 WL 1627973, *7 (N.D. Cal. Apr. 29, 2011).

Moreover, "a presumption of fairness arises where: (1) counsel is experienced in similar litigation; (2) settlement was reached through arm's length negotiations; (3) investigation and discovery are sufficient to allow counsel and the court to act intelligently." In re Heritage Bond Litig., 2005 WL 1594403, *2 (C.D. Cal. June 10, 2005). "In deciding whether to approve a proposed settlement, the Ninth Circuit has a 'strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.'" In re Heritage Bond Litig., 2005 WL 1594403, *2 (C.D. Cal. June 10, 2005) (citing Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992)). "Generally, the district court's review of a class action settlement is 'extremely limited.'" Harris, 2011 WL 1627973, *7 (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir.1998)). "The Court considers the settlement as a whole, rather than its components, and lacks the authority to delete, modify or substitute certain provision." Id. (internal citation omitted).

B. The Court Should Preliminarily Approve the Settlement

Under Fed. R. Civ. P. 23(e)(2), the Court must consider whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

See Fed. R. Civ. P. 23(e)(2). "In the notes accompanying these amendments, the Advisory Committee acknowledged that '[c]ourts have generated lists of factors' to determine the fairness, reasonableness, and adequacy of a settlement" such that "adding these specific factors to Rule 23(e)(2) was not designed 'to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.'" Hefler v. Wells Fargo & Co., 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018). Courts in the Ninth Circuit have typically found preliminary approval of a settlement and notice to the class is appropriate if it: (1) falls within the range of possible approval; (2) is the product of serious, informed, non-collusive negotiations, (3) has no obvious deficiencies; and (4) does not improperly grant preferential treatment to class representatives or segments of the class. Deaver v. Compass Bank, 2015 WL 4999953, *4 (N.D. Cal. Aug. 21, 2015). Here, both under the factors enumerated in Rule 23(e)(2) and the factors traditionally considered by the Ninth Circuit, the proposed settlement clearly warrants preliminary approval.

1. The Settlement is the Product of Informed, Non-Collusive Negotiation

Under Fed. R. Civ. P. 23(e)(2)(A)-(B), "[t]he Court must consider whether 'the class representatives and class counsel have adequately represented the class' and whether 'the proposal was negotiated at arm's length', [which] [] the Advisory Committee notes suggest, [] are 'matters that might be described as procedural concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement.'" Hefler, 2018 WL 6619983, at *6. Courts in this Circuit have likewise found that for the parties "to have brokered a fair settlement, they must have been armed with sufficient information about the case to have been able to reasonably assess its strengths and value." Acosta v. Trans Union, LLC, 243 F.R.D. 377, 396 (C.D. Cal. 2007). Thus, adequate discovery and the use of an experienced mediator support a finding that settlement negotiations were both informed and non-collusive. See Villegas v. J.P. Morgan Chase & Co., 2012 WL 5878390, *6 (N.D. Cal. Nov. 21, 2012); Deaver, 2015 WL 4999953, *7; Satchell v. Fed. Express Corp., 2007 WL 1114010, *4 (N.D. Cal. Apr. 13, 2007) ("The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive").

Here, "[b]y the time the settlement was reached, the litigation had proceeded to a point in which both plaintiffs and defendants had a clear view of the strengths and weaknesses of their cases." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (internal citations omitted). The parties have already litigated a full bench trial on Plaintiff's individual California Labor Code claims. The Court has held that Plaintiff was GrubHub's employee and that he was an "aggrieved employee" for the purposes of PAGA. See Lawson, 665 F. Supp. 3d at

1116-31. At the time the case settled, the parties were prepared to go to trial in order for the Court to assess PAGA penalties. (Liss-Riordan Decl. ¶¶ 12-13.) GrubHub had provided nearly 100 million rows of data through which the parties could assess GrubHub's potential liability for PAGA penalties. (Liss-Riordan Decl. ¶¶ 15, 37.) Additionally, during the life of the case, the parties mediated with experienced mediators no fewer than five times, including before the Honorable Joseph C. Spro, respected employment mediator Mark S. Rudy, and respected wage-and-hour mediator Tripper Ortman. (Liss-Riordan Decl. ¶ 14.) Most recently, the parties mediated before Mr. Ortman (for the third time) on September 13, 2024. (Liss-Riordan Decl. ¶ 14.) While that mediation did not result in a settlement, it informed the parties positions as they eventually reached settlement in April 2025. (Liss-Riordan Decl. ¶¶ 14-20.)

In these negotiations, Class counsel was informed by her prior experience negotiating many other gig economy settlements. (Liss-Riordan Decl. at ¶¶ 45-46.) The settlement the parties have reached was the result of thorough and passionate negotiations by experienced counsel familiar with the applicable law, class action litigation, and the facts of this case. See Nielson v. The Sports Authority, 2013 WL 3957764, *4–5 (N.D. Cal. July 29, 2013) ("[T]he settlement resulted from non-collusive negotiations, i.e., a mediation before Mark Rudy, a respected employment attorney and mediator."); Barcia v. Contain-A-Way, Inc., 2009 WL 587844, *1 (S.D. Cal. Mar. 6, 2009) (granting final settlement approval and finding that Mark Rudy is a "nationally recognized labor mediator"); Zolkos v. Scriptfleet, Inc., 2014 WL 7011819, *2 (N.D. Ill. Dec. 12, 2014) ("Two experienced class action employment mediators, [including] Mark Rudy . . . assisted the Parties with the settlement negotiations and presided over two full-day mediations. This reinforces the non-collusive nature of the settlement."). Thus, the parties had ample information, expert guidance from an experienced mediator, and intimate familiarity with the strengths and weaknesses of the case.

2. The Relief Provided for the Settlement Class Is Fair and Adequate

"Rule 23(e)(2)(C) and (D) set forth factors for conducting a 'substantive' review of the terms of the proposed settlement." Hefler, 2018 WL 6619983 , at *7 (citing Fed. R. Civ. P.

23(e)(2)(C)-(D) advisory committee's note to 2018 amendment). "In determining whether 'the relief provided for the class is adequate,' the Court must consider '(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).'" Id. (citing Rule 23(e)(2)). Similarly, courts in the Ninth Circuit have evaluated "the range of possible approval criterion, which focuses on substantive fairness and adequacy, [] primarily [by] consider[ing] plaintiff's expected recovery balanced against the value of the settlement offer." Deaver v. Compass Bank, 2015 WL 4999953, *9 (N.D. Cal. Aug. 21, 2015).

a. Risks of Further Litigation

A "relevant factor" that courts must consider in contemplating a potential settlement is "the risk of continued litigation balanced against the certainty and immediacy of recovery from the Settlement." Vasquez, 266 F.R.D. at 489. Thus, courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Id. (citing Oppenlander v. Standard Oil Co. (Ind.), 64 F.R.D. 597, 624 (D.Colo.1974)).

Here, Plaintiff recognized the delay that was sure to transpire in going forward. Plaintiff was confident that the Court would assess very substantial PAGA penalties against GrubHub. However, going to trial also entailed significant risk. First, GrubHub was likely to argue that the Court should significantly reduce the PAGA penalties that Plaintiff stood to recover. PAGA's express language permits courts to "award a lesser amount than the maximum civil penalty" to avoid "unjust" or "oppressive" awards. Cal. Lab. Code § 2699(e)(2). See also Mancuso v. Tauber, 2016 WL 7647658, at *10 (C.D. Cal. May 31, 2016). This discretion presented a meaningful risk to Plaintiff, because the Court only held GrubHub liable to Plaintiff in the amount $65.11 for his underlying minimum wage claim. Additionally, GrubHub indicated that it intended to renew its argument that Plaintiff lacked standing to pursue PAGA penalties after

2017 or for drivers who had rejected a high rate of delivery requests. (GrubHub's Trial Plan at 10-12, Dkt. 396.) The Court's Order of February 1, 2024, finding that Plaintiff had standing to pursue penalties after 2017 stated explicitly that its "standing analysis may change as the record develops." (Order at 1-2, Dkt. 367.) If GrubHub established at trial that Plaintiff lacked standing to recover after 2017, the PAGA penalties that he could have recovered would have been reduced by more than 50%.

Second, even if the Court assessed the maximum amount of civil penalties that it could have for the full period between December 3, 2014, and December 16, 2020, based on minimum wage damages of potentially more than $400 million (a number that GrubHub vehemently disputes), GrubHub had expressed concern with its ability to pay any such award. As stated *supra*, in November 2024, GrubHub was acquired for $650 million, whereas in 2020 GrubHub had been acquired in a deal that was valued at $7.3 billion. (GrubHub 2024 Acquisition Press Release, Exhibit 3 to Liss-Riordan Decl.; GrubHub 2020 Acquisition Press Release, Exhibit 4 to Liss-Riordan Decl.) Additionally, on December 31, 2024, GrubHub stipulated with the FTC to a judgment of $140,000,000. This amount was suspended – based on GrubHub's representation that it could not pay it – to $24,800,000. (FTC and GrubHub Stipulated Order, Exhibit 5 to Liss-Riordan Decl.) Plaintiff also conducted due diligence into GrubHub's current financial position and ability to pay, which informed Plaintiff's position in the settlement negotiations. (Liss-Riordan Decl. ¶¶ 14-20.)

Third, the delays in recovering the amount of any PAGA penalties that are awarded from GrubHub were likely to be significant. GrubHub would undoubtedly have appealed in judgment in Plaintiff's favor. Even then, the litigation would not be concluded since the PAGA penalties could recover based on overtime and expense reimbursement violations has been stayed, since Plaintiff does not have Article III standing to pursue them in federal court. See Lawson, 2024 WL 396183, at *4. Absent a settlement, litigation would commence in state court on those penalties after the matter before this Court concluded.

In sum, after carefully considering these risks and the potential benefits of proceeding further with this case, Plaintiff concluded that the significant monetary relief obtained here for the drivers is in the best interests of the settlement class.

b. Benefit to Drivers

Plaintiff has analyzed the potential monetary value of the PAGA penalties at issue in this matter. As described above, the settlement awards the Settlement Class significant monetary benefit. (Liss-Riordan Declaration at ¶¶ 36-38.) In view of the ongoing legal issues and uncertainties that Plaintiff continued to face, discussed above and in the Liss-Riordan Declaration at ¶¶ 14-19, 30-35, there can be no doubt that this is an excellent result for the class. To reiterate, although Plaintiff contends that GrubHub is liable for PAGA penalties based on more than $400 million of underlying minimum wage violations, GrubHub vigorously denies the accuracy of Plaintiff's calculations and was prepared to challenge them at the remedies trial. (Liss-Riordan Declaration at ¶ 37.) "[I]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." Villegas, 2012 WL 5878390, *6 (approving gross settlement of "approximately fifteen percent (15%) of the potential recovery against Defendants"). Moreover, and as explained above, Plaintiff faced real risk that the Court would significantly reduce the PAGA penalties, and that GrubHub would not be able to pay such a judgment (even if Court assessed penalties in the range that Plaintiff sought). (Liss-Riordan Declaration at ¶¶ 30-35.) The settlement amount of $24,750,000 provides real value to the settlement class members while defraying the significant risks. See also Barbosa v. Cargill Meat Sols. Corp. (E.D. Cal. 2013) 297 F.R.D. 431, 446 (noting that "there were significant risks in continued litigation and no guarantee of recovery" whereas "[t]he settlement [] provides Class Members with another significant benefit that they would not receive if the case proceeded—certain and prompt relief"); Vasquez v. Coast Valley Roofing, Inc. (E.D. Cal. 2010) 266 F.R.D. 482, 489 (Courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation.").

3. The Settlement Has No Obvious Deficiencies

A court should also consider possible deficiencies in a settlement including an overly broad release of claims, an insufficient timeframe for notice, an inadequate form of payment, an unrelated cy pres designee, or an unreasonable request for attorneys' fees, among other things. See Custom LED, LLC v. eBay, Inc, 2013 WL 6114379, *7-8 (N.D. Cal. Nov. 20, 2013); Deaver, 2015 WL 4999953, *7. Here, settlement class members will release only wage-and-hour claims, such as those that could arise from their alleged misclassification as independent contractors, and will not release claims for discrimination, wrongful termination, personal injury, or pay issues not related to misclassification. (Settlement Agreement ¶ 2.4, Exhibit 1 to Liss-Riordan Decl.) The timeframe for notice is adequate, and settlement class members will be given ample opportunity to submit claims. (Settlement Agreement ¶¶ 6.1-6.11, Exhibit 1 to Liss-Riordan Decl.) Likewise, the distribution will compensate drivers fairly, as discussed above. No unclaimed funds will revert to GrubHub; rather they will be redistributed amongst settlement class members, and, if necessary, given to the cy pres designee.

Further, the attorneys' fee provision is fair and does not give rise to any deficiency. Plaintiffs' counsel intends to apply for fees not to exceed 33.33% of the gross settlement fund. (Liss-Riordan Decl. at ¶ 24.) The settlement is not contingent upon the Court approving counsel's application. Courts in this district have routinely awarded one-third of the common fund as attorneys' fees in class action settlements. See, e.g., Hernandez v. Dutton Ranch Corp., 2021 WL 5053476, at *6 (N.D. Cal. Sept. 10, 2021) ("District courts within this circuit, including this Court, routinely award attorneys' fees that are one-third of the total settlement fund."); Benitez v. W. Milling, LLC, 2020 WL 3412725, at *9 (E.D. Cal. June 22, 2020) (approving one-third fee award) (collecting cases); Vasquez, 266 F.R.D. at 492 (E.D. Cal. 2010) (collecting recent wage and hour cases in which counsel received fee awards in the range of 30% to 33.3% of the common fund); Lusby v. GameStop Inc., 2015 WL 1501095, *9 (N.D. Cal. Mar. 31, 2015) (finding a one-third fee award appropriate because to the results achieved, the risk of litigation, the skill required and the quality of work, and the contingent nature of the fee and the financial burden carried by the plaintiffs); Barnes v. The Equinox Grp., Inc., 2013 WL 3988804, *4 (N.D. Cal. Aug. 2, 2013) (awarding one-third of gross settlement in fees and costs because counsel assumed substantial risk and litigated on a contingency fee-basis).[3]

Here, this case has required an exceptional amount of hard work and tenacity on the part of Plaintiff's counsel, who has litigated this case for *ten years* on a complete contingent fee basis. Plaintiff's counsel have successfully litigated an appeal at the Ninth Circuit. Plaintiff's counsel risked never receiving any fees for this case, and indeed, the case could have been dead when the Court held that Plaintiff was an independent contractor in 2018.

4. The Settlement Does Not Unfairly Grant Preferential Treatment to Any Settlement Class Members

"Consistent with Rule 23's instruction to consider whether 'the proposal treats class members equitably relative to each other,' Fed. R. Civ. P. 23(e)(2)(C)(i), the Court considers whether the Settlement 'improperly grant[s] preferential treatment to class representatives or segments of the class.'" Hefler, 2018 WL 6619983, at *8 (citing In re Tableware Antitrust Litig., 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). "[T]o the extent feasible, the plan should provide class members who suffered greater harm and who have stronger claims a larger share of the distributable settlement amount." Hendricks v. StarKist Co., 2015 WL 4498083, *7 (N.D. Cal. July 23, 2015) (citing cases). However, "courts recognize that an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." Id. (citing Vinh Nguyen v. Radient Pharm. Corp., 2014 WL 1802293, *5 (C.D. Cal. May 6, 2014)). Here, the settlement will result in payment of a fair and reasonable award to settlement class members, particularly in light of the litigation risks. Here, settlement class members will receive settlement shares based on the number of miles they drove to deliver

[3] While a number of courts in this district have referred to 25 percent as a "benchmark percentage", see, e.g., Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013), other courts have recognized that "in most common fund cases, the award exceeds that benchmark percentage." Id.; In re Activision Sec. Litig., 723 F. Supp. 1373, 1377 (N.D. Cal.1989) ("nearly all common fund awards range around 30%").

food items to customers using GrubHub's app. (Settlement Agreement ¶¶ 2.12, 5.7, Exhibit 1 to Liss-Riordan Decl.)

Likewise, the proposed service award for Plaintiff in this settlement is eminently reasonable. Plaintiff will request a service award for $100,000 (Liss-Riordan Decl. at ¶ 25.) Plaintiff stood to gain very little personally in this case – he only drove for GrubHub for a few months, and the Court only found GrubHub liable to him for $65.11 in minimum wage damages. Lawson, 665 F. Supp. 3d at 1131-36. Even when PAGA penalties are assessed, Plaintiff does not stand to gain more than a few hundred dollars. He pursued the case—for a decade—in order to advocate for fellow drivers and stand against the misclassification of drivers in the gig economy. Plaintiff was deposed, responded to extensive discovery, and gave lengthy testimony during the bench trial in this matter. The bench trial was, to the knowledge of Plaintiff's counsel, the very first gig economy misclassification case ever to go to trial anywhere in the country. As a result, the trial was extremely public, and Plaintiff's reputation was damaged significantly. See Joe Mullin, Grubhub trial ends with judge calling out plaintiff's lies – small details of a part-time actor's delivery job have become a federal case, Ars Technica (Oct. 30, 2017), https://arstechnica.com/tech-policy/2017/10/grubhub-gig-economy-trial-ends-with-judge-calling-out-plaintiffs-lies/ (attached as Exhibit 6 to Liss-Riordan Decl.); see also Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326, 334 (N.D. Cal. Oct. 22, 2024) (explaining that service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.") (quoting Rodriguez v. West Publishing Corp., 563 F.3d 948, 958-59 (9th Cir. 2009)). Nevertheless, Plaintiff stuck with the case over *ten years* and saw it through to a very favorable settlement.

Plaintiff's requested service award of $100,000 represents only 0.04% of the total settlement amount of $24,750,0000. This requested amount is in line with awards in other cases in the federal district courts in California. See, e.g., Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 300 (N.D. Cal. 1995) (awarding $50,000 to named plaintiff out of $76 million settlement fund); Wilson v. Metals USA, Inc., 2021 WL 516585, at *9-10 (E.D. Cal. 2021) (awarding $25,000 and $14,000 to two named plaintiffs, representing 1.4% of a gross settlement fund of $2,800,000); Glass v. UBS Fin. Servs., 2007 WL 221862, at *16–17 (N.D. Cal. Jan. 26, 2007) (approving a $25,000 incentive award to four named plaintiffs in connection with a $45 million settlement); Brooks v. Lines, No. C 10-01404 WHA, ECF Nos. 57 at 17; 87 ¶ 12 (N.D. Cal.) (approving $25,000 service award to class representative for case lasting two years, where class representative faced retaliation, and where total settlement was $1.5 million while potential recovery was over $11 million).

Plaintiff recognizes that this requested service award is higher than the usual amount that is awarded in these settlements. However, this case warrants the larger award that Plaintiff has requested. This case resulted in extremely extended litigation and was a landmark case—resulting in a far greater recovery than seemed likely at multiple points along the way. To start, Plaintiff was able to bring this case in the first place because he opted out of arbitration (and was one of only a handful of GrubHub drivers in the state to have done that). Further, to reiterate, this was the first gig economy misclassification case that ever went to trial. The large amount of work that Plaintiff did in prosecuting the case over the past ten years is beyond what any other known gig economy worker has done to prosecute claims in court on behalf of his fellow workers. Further, the trial was very public, and Plaintiff's reputation was significantly damaged. See Van Vranken, 901 F. Supp. at 299 (noting that in evaluating incentive awards, courts may consider "the notoriety and personal difficulties encountered by the class representative" and "the amount of time and effort spent by the class representative" among other factors). In this extraordinary case, a $100,000 service award is warranted.

C. Certification of the Settlement Class Is Appropriate

The Court must confirm the propriety of the settlement class by determining "if it meets the four prerequisites identified in Federal Rule of Civil Procedure 23(a) and additionally fits within one of the three subdivisions of Federal Rule of Civil Procedure 23 (b)." Alberto v. GMRI, Inc., 252 F.R.D. 652, 659 (E.D. Cal. 2008). Here, although the Court granted

GrubHub's motion to deny class certification, the Court did so because all putative class members aside from Plaintiff and one other driver had signed GrubHub's arbitration agreement. (Order, Dkt. 65.) For settlement purposes, GrubHub is now willing to stipulate to class certification. (Settlement Agreement ¶¶ 1.19, 3.5.3, Exhibit 1 to Liss-Riordan Decl.) The Settlement Class consists of any and all individuals who entered into an agreement with GrubHub to use the GrubHub platform as an independent contractor to offer delivery services to customers, and used the Grubhub platform as an independent contractor service provider to accept or complete at least one delivery in California between December 3, 2014, and December 15, 2020.[4] (Settlement Agreement ¶¶ 1.19, 3.5.3, Exhibit 1 to Liss-Riordan Decl.)

1. Requirements of Fed. R. Civ. P. 23(a)

Rule 23 (a) requires that Plaintiff demonstrate: "(1) numerosity of plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff's claims and defenses are typical; and (4) the named plaintiff can adequately protect the interests of the class." Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 441 (E.D. Cal. 2013). Here, all criteria are met.

a. Numerosity

A plaintiff will satisfy the numerosity requirement if "the class is so large that joinder of all members is impracticable." Hanlon, 150 F.3d at 1019 (9th Cir.1998). "Although the requirement is not tied to any fixed numerical threshold, courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members." Villalpando v. Exel Direct, Inc., 303 F.R.D. 588, 605-06 (N.D. Ca. 2014). Here, the total settlement class consists of approximately 60,000 delivery drivers. (Liss-Riordan Decl. at ¶ 21.) Thus, the

---

[4] In addition to certification of the Settlement Class pursuant to Rule 23, Plaintiff also moves for the Court to certify, for settlement purposes only, a collective under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b). (Settlement Agreement ¶¶ 1.20, 3.5.3, Exhibit 1 to Liss-Riordan Decl.) Workers may litigate collectively under § 216(b) of the FLSA provided that they establish that they are "similarly situated." Campbell v. City of Los Angeles, 903 F.3d 1090, 1100 (9th Cir. 2018). Here, the Court should authorize a collective for settlement purposes only. Given that the Settlement Class meets the requirements of Rule 23 (as will be explained below), it also is "similarly situated" for the purposes of the FLSA.

numerosity requirement is easily satisfied.

b. Commonality

Courts have found that "[t]he existence of shared legal issues with divergent factual predicates is sufficient, [to satisfy commonality under Rule 23] as is a common core of salient facts coupled with disparate legal remedies within the class." Smith v. Cardinal Logistics Mgmt. Corp., 2008 WL 4156364, *5 (N.D. Cal. Sept. 5, 2008). The "commonality requirement has been 'construed permissively,' and its requirements deemed minimal." Estrella v. Freedom Fin'l Network, 2010 U.S. Dist. LEXIS 61236 (N.D. Cal. 2010) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019-1020 (9th Cir. 1998)).

Here, all settlement class members share the key question of whether they have been improperly classified as independent contractors and also share common questions of law with respect to their substantive claims for minimum wage, overtime, failure to reimburse expenses under the California Labor Code.

The Ninth Circuit has already held that the "ABC" misclassification test applies to the minimum wage and overtime claims at issue in this case. See Lawson, 13 F.4th at 916. The ABC test requires the alleged employer to establish three factors to prove independent contractor status:

> (A) the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; and
>
> (B) that the worker performs work that is outside the usual course of the hiring entity's business; and
>
> (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Id. at 914. Plaintiff alleges that GrubHub's delivery drivers perform the same service—making deliveries to GrubHub's customers—and that delivery is GrubHub's usual course of business. Indeed, the Court already concluded that Plaintiff was an employee, at least for purposes of the minimum wage and overtime claims, and a class can be certified on this basis alone. See Lawson, 665 F. Supp. 3d at 1118-24.[5]

GrubHub disputes Plaintiff's allegations but consents to certification of the settlement class solely to effectuate the settlement. It otherwise reserves its right to oppose class certification for litigation purposes and to dispute Plaintiff's allegations.

c. Typicality

"Typicality is a permissive standard, and only requires that the named plaintiffs' claims are 'reasonably coextensive' with those of the class." Dalton v. Lee Publications, Inc., 270 F.R.D. 555, 560 (S.D. Cal. 2010). Thus, "[i]n examining this condition, courts consider whether the injury allegedly suffered by the named plaintiffs and the rest of the class resulted from the same alleged common practice." Id. (internal quotation omitted). Here, there are no factual differences between Plaintiff's claims and those of the settlement class members. See Roman v. Jan-Pro Franchising International, Inc., 342 F.R.D. 274, 290 (N.D. Cal. 2022) ("[P]laintiffs and the putative class members allege the same injuries arising from the same conduct. Although there may be some differences between plaintiffs' experiences and those of the putative class members, plaintiffs' claims are reasonably co-extensive with those of the putative class members. This order finds typicality is satisfied.")

d. Adequacy

"Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) will the named

---

[5] While the Court held that common law test of S.G. Borello & Sons, Inc. v. Department of Industrial Relations, 48 Cal.3d 341 (1989), applies to Plaintiff's expense reimbursement claim rather than the ABC test (Dkt. 292), that issue further reflects the risk to Plaintiff in recovering for that claim, which has typically been the primary claim upon which gig economy class settlements have been based. See, e.g., Cotter v. Lyft, Inc., 193 F.Supp.3d 1030, 1039 (N.D. Cal. 2016) (approving class action settlement of Lyft drivers' misclassification claims based on drivers' expense reimbursement claim); Marciano v. DoorDash Inc. CGC-15-548102 (Kahn, J.) (Cal. Sup. Ct. July 12, 2018) (approving settlement considering the most valuable expense reimbursement claim). In any event, the relevant question for class certification is whether GrubHub's "right of control over its [drivers], whether great or small [is] sufficiently uniform to permit classwide assessment." Nash v. Horizon Freight Systems, Inc., 2020 WL 7640878, at *2 (N.D. Cal. Dec. 3, 2020). The same circumstances present in that case are present here.

plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020. Here, neither Plaintiff nor his counsel have any conflicts of interest with other class members, as they are challenging practices that Plaintiff contends are applied uniformly to all drivers. Moreover, Plaintiff's counsel have extensive expertise and experience in "gig economy" cases. O'Connor v. Uber Technologies, Inc., 2019 WL 1437101 (N.D. Cal. Mar. 29, 2019), at *15 ("Shannon Liss-Riordan . . . of the law firm of Lichten & Liss-Riordan, P.C., whom the Court finds [is] experienced and adequate counsel for purposes of these settlement approval proceedings, [is] designated as Class Counsel.").

2. Requirements of Fed. R. Civ. P. 23(b)

Rule 23(b)(3) requires the Court to find that: (1) "the questions of law or fact common to class members predominate over any questions affecting only individual members," and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Some of the factors that are part of the Rule 23(b)(3) analysis are rendered irrelevant in the settlement context, such as "the likely difficulties in managing a class action." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 488 (E.D. Cal. 2010) (noting that this factor is "essentially irrelevant" in "the context of settlement"); see also Alberto v. GMRI, Inc., 252 F.R.D. 652, 664 (E.D. Cal. 2008); Spann v. J.C. Penney Corp., 2016 WL 297399, *3 (C.D. Cal. Jan. 25, 2016) ("[C]ourts need not consider the Rule 23(b)(3) considerations regarding manageability of the class action, as settlement obviates the need for a manageable trial.").

Here, common questions predominate, both with respect to drivers' status under the ABC test and Borello, as well as the underlying Labor Code claims. Specifically, Prong B of the conjunctive "ABC" test for employee status is capable of determination on a class-wide basis for all drivers and because any prong could prove dispositive here, class certification is appropriate. See Roman, 342 F.R.D. at 295 (finding that common questions predominated with respect to the Prong B inquiry); Nash, 2020 WL 7640878, at *2 (finding that common questions predominated with respect to Borello's right to control test).

Finally, a class action in this instance is superior to individual actions. It has been well-recognized that "[w]here recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification." Noll v. eBay, Inc., 309 F.R.D. 593, 604 (N.D. Cal. 2015). Here, there are approximately 60,000 class members, many of whom (like Plaintiff) likely worked only short periods for GrubHub. Granting class certification is superior to litigating the individual cases that would remain without certification. See Roman, 342 F.R.D. at 296 ("It would be inefficient to try the misclassification issue on an individual basis for the numerous putative class members here when common questions predominate. See Alan Wright & Arthur R. Miller, 7AA Fed. Prac. & Proc. Civ. § 1778 (3d ed. 2022)). Moreover, plaintiffs are correct in pointing out: (1) the chilling effect that fear of employer retaliation will have on unit franchisees deciding whether to file individual lawsuits; and (2) the difficulty for unit franchisees to bring individual claims, given that the vast majority of them are unsophisticated with regard to legal matters.").

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Preliminary Approval should be granted. The Court should allow the Settlement Administrator to proceed with the issuance of notice and should schedule the case for a final settlement approval hearing.

Dated: August 13, 2025

Respectfully submitted,

RAEF LAWSON, in his capacity as
Private Attorney General Representative

By his attorneys,

/s/ Shannon Liss-Riordan

Shannon Liss-Riordan (State Bar No. 310719)
Thomas Fowler, *pro hac vice*
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617) 994-5800
Email: sliss@llrlaw.com; tfowler@llrlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served by electronic filing on August 13, 2025, on all counsel of record.

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan