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Others Similarly Situated, Other Aggrieved
Employees, and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ASHLEY CABALLERO, AMERICA
CABALLERO, and LUIS VENEGAS,
individuals, on behalf of themselves, all
others similarly situated, all other
aggrieved employees, and the general
public,

Plaintiffs,

vs.

FIDELITONE LAST MILE, INC., a
Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

CASE NO. CIVSB2102002

CLASS ACTION

- 1. FAILURE TO PAY MINIMUM WAGES**
- 2. FAILURE TO PAY OVERTIME
COMPENSATION**
- 3. REIMBURSEMENT OF EMPLOYMENT
EXPENSES**
- 4. UNLAWFUL DEDUCTIONS FROM WAGES**
- 5. FAILURE TO PROVIDE MEAL PERIODS**
- 6. FAILURE TO AUTHORIZE AND PERMIT
REST PERIODS**
- 7. FAILURE TO FURNISH ACCURATE WAGE
STATEMENTS**
- 8. WAITING TIME PENALTIES**
- 9. UNFAIR COMPETITION**
- 10. CIVIL PENALTIES UNDER LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE 2698, ET. SEQ**

1 Plaintiffs ASHLEY CABALLERO, AMERICA CABALLERO, and LUIS VENEGAS
2 (“Plaintiffs”), individually, on behalf of all similarly situated individuals, and on behalf of all other
3 aggrieved employees, allege as follows :

4 **GENERAL ALLEGATIONS**

5 1. This is a proposed class action brought against Defendant FIDELITONE LAST MILE,
6 INC. and DOES 1 through 25, inclusive (collectively, “Defendants” or “Fidelitone”), on behalf of
7 Plaintiffs and all other non-employee workers who worked in California as a Contract Carrier, Driver,
8 and/or Helper (hereinafter collectively referred to as “Delivery Drivers”) for Defendants at any time
9 during the four years preceding April 6, 2020¹, and continuing while this action is pending (“Class
10 Period”), who were denied the benefits and protections required under the California Labor Code and
11 other statutes and regulations applicable to California employees.

12 2. During the Class Period, Defendants:

- 13 a. unlawfully misclassified Delivery Drivers as independent contractors;
- 14 b. failed to pay wages for all hours worked by Delivery Drivers;
- 15 c. failed to pay Delivery Drivers the applicable legal minimum wage;
- 16 d. failed to pay overtime wages due to Delivery Drivers;
- 17 e. failed to provide meal and rest periods due to Delivery Drivers;
- 18 f. failed to provide the Delivery Drivers with timely and accurate wage and
19 hour statements;
- 20 g. failed to pay the Delivery Drivers compensation in a timely manner upon
21 their termination or resignation;
- 22 h. failed to maintain complete and accurate payroll records for the Delivery
23 Drivers;
- 24 i. wrongfully withheld wages and compensation due to the Delivery Drivers;
- 25 j. committed unfair business practices in an effort to increase profits and to gain
26 an unfair business advantage at the expense of the Delivery Drivers and the

27 _____
28 ¹ Pursuant to California Emergency Rule of Court 9, the statute of limitations for this matter was tolled beginning on
April 6, 2020 and, as of the date of filing of this Complaint, remains in effect.

1 public; and

2 k. committed violations of the Private Attorneys General Act of 2004 (“PAGA”)

3 3. The foregoing acts and other acts by Defendants - committed throughout California
4 and San Bernardino County - violated provisions of the California Labor Code, including sections
5 201, 202, 203, 204, 210, 226, 226.7, 226.8, 246, 510, 512, 515, 551, 552, 558, 1194, 1198, and 2802
6 (collectively, “Employment Laws”), violated the applicable Wage Orders issued by California’s
7 Industrial Welfare Commission, including Wage Orders 9-2001 during the Class Period
8 (“Regulations”), violated California’s Unfair Business Practices Act, California Business &
9 Professions Code sections 17200 *et seq.*, and violated Plaintiff’s rights.

10 **JURISDICTION AND VENUE**

11 4. Venue is proper in this Judicial District and the County of San Bernadino because work
12 was performed by Plaintiffs and other members of the Class for Defendants in the County of San
13 Bernardino, California, and Defendants’ obligations under the Employment Laws and Regulations to
14 pay overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiffs and
15 other members of the Class arose and were breached in California, including the County of San
16 Bernardino.

17 5. The California Superior Court has jurisdiction in this matter because Plaintiffs are
18 residents of California, and Defendants are corporations qualified to do business in California and
19 regularly conduct business in California. Further, no federal question is at issue as the claims are
20 based solely on California law.

21 6. Plaintiffs are informed and believe and on that basis alleges that Defendant
22 FIDELITONE LAST MILE, INC., as a foreign corporation, has not designated any county in
23 California as its principal place of business. As such, venue is proper in any county in California.

24 **THE PARTIES**

25 7. Plaintiffs ASHLEY CABALLERO, AMERICA CABALLERO, and LUIS VENEGAS
26 are, and at all relevant times were, competent adults residing in California. Plaintiffs brings suit on
27 behalf of themselves and all similarly situated individuals pursuant California Code of Civil Procedure
28 section 382, and California Business & Professions Code sections 17200, *et seq.* Plaintiffs were

1 unlawfully classified by Defendant Fidelitone Last Mile, Inc. as an independent contractor and worked
2 as a Driver and/or Helpers in California.

3 8. Defendant FIDELITONE LAST MILE, INC. is, and at all relevant times was, a
4 Delaware corporation registered with the State of California's Secretary of State. Fidelitone provides
5 logistics and delivery services to its retail merchants like Pottery Barn, Williams-Sonoma, and others,
6 to deliver product and services to their clients' customers. Fidelitone utilizes Delivery Drivers to pick
7 up the merchandise at the merchants' stores or warehouses and to deliver and install them at the
8 customers' homes or businesses. FIDELITONE is therefore a provider of managed transportation
9 services including the planning and execution for "last mile" delivery of its retail merchant clients.
10 FIDELITONE has engaged in unlawful employment practices addressed in this Complaint throughout
11 California and in San Bernardino County.

12 9. Plaintiffs are informed and believe and based thereon alleges that Defendants uniformly
13 apply their pay practices, and overtime policies to all Drivers and Driver Assistants. Plaintiffs are
14 currently unaware of the true names and capacities of the defendants sued in this action by the fictitious
15 names DOES 1 through 25, inclusive, and therefore sue those defendants by such fictitious names.

16 10. Plaintiffs will amend this Complaint to allege the true names and capacities of such
17 fictitiously named defendants when they are ascertained.

18 11. Plaintiffs are informed and believe and based thereon alleges that each defendant sued
19 in this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is
20 responsible in some manner for the occurrences, controversies and damages alleged below.

21 12. Plaintiffs are informed and believe and based thereon alleges that DOES 1 through 25,
22 inclusive were the agents, servants and/or employees of Defendants and, in doing the things hereinafter
23 alleged and at all times, were acting within the scope of their authority as such agents, servants and
24 employees, and with the permission and consent of Defendants.

25 13. Plaintiffs are informed and believe and based thereon alleges that Defendants ratified,
26 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.

27 14. Plaintiffs are informed and believe and based thereon alleges that Defendants, and each
28 of them, were their employer under California law, that Defendants did acts consistent with the

1 existence of an employer-employee relationship with Plaintiffs despite their unlawful classification of
2 Plaintiffs as independent contractor.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**

4 15. Defendants unlawfully classified Plaintiffs and other similarly situated individuals as
5 independent contractors when, in fact, they were heavily regulated through a series of work-related
6 restrictions and directives through Defendants.

7 16. Specifically, Fidelitone secures truck owners and contracts with such truck owners for
8 purposes of delivering, installing, and picking up of merchandise and products to Fidelitone’s clients’
9 customers. These truck owners go to the warehouses of Fidelitone ’s clients and go through a hiring
10 process with Fidelitone’s employees who are officed at the same site. Truck owners are hired by
11 Fidelitone. Truck owners then bring on drivers and driver assistants who are also evaluated by
12 Fidelitone for hiring purposes. Delivery Drivers provide “last mile” delivery, installation, and haul
13 away services. These services are integral and essential to Fidelitone’s core business.

14 17. Fidelitone’s “Carrier/Independent Contractor Agreement” (“Agreement”) with
15 Delivery Drivers, states that the Delivery Drivers are independent contractors. The Agreements are
16 contracts of adhesion that are drafted exclusively by Fidelitone and/or on its behalf by its agents. The
17 terms of the Agreement are non-negotiable. Through this agreement, Fidelitone reserves and actually
18 exercises the right to control the manner and means by which the Delivery Drivers perform their duties
19 for Fidelitone.

20 18. Fidelitone has a series of directives that Delivery Drivers must abide by despite the fact
21 that Fidelitone unlawfully classifies them as independent contractors. Fidelitone reserves the right to
22 determine the locations where the Delivery Drivers pick up and drop off the merchandise assigned to
23 them; the time of day when they must report to work; and the order and timing of their deliveries.
24 Fidelitone provides each Delivery Driver a daily manifest of work assignments that includes the
25 delivery address, the “service window” time when the delivery must be made, and whether the
26 Delivery Driver is required to call the customer 30 minutes ahead of arrival to give notice of when he
27 will make the delivery. The Delivery Drivers must complete all of the work assigned to them and are
28 not allowed to refuse assignments. Fidelitone reserves the right to control the Delivery Drivers’

1 physical appearance, including requiring them to wear Fidelitone uniforms. Fidelitone also reserves
2 the right to require the Delivery Drivers to know and follow Fidelitone’s customer service standards
3 in performing their work, and conduct surveys to determine whether customers are satisfied with the
4 Delivery Drivers’ work.

5 19. Fidelitone further reserves the right to require the Delivery Drivers to follow certain
6 work methods related to, for example, how to move and install the appliances and how to interact with
7 customers. Fidelitone determines the year, branding, and other specifications of the vehicles that the
8 Delivery Drivers use to perform their work. Fidelitone prescribes how the Delivery Drivers document
9 their work and require the Delivery Drivers to contact Fidelitone upon arrival at each stop and then
10 again after the delivery is completed. Fidelitone also reserves the right to require the Delivery Drivers
11 to call each customer 30 minutes before making the delivery to let the customers know they are on
12 their way. Fidelitone employs a variety of managerial and supervisory employees who instruct the
13 Delivery Drivers on their job performance and their delivery assignments. The Delivery Drivers
14 interact with Fidelitone’s personnel on a daily basis. Fidelitone’s managerial and supervisory
15 employees also hold regular in-person and/or telephonic meetings where the Delivery Drivers’
16 attendance is mandatory.

17 20. The Delivery Drivers are paid each week by Fidelitone a flat amount for each delivery,
18 or for each day or week of work, in amounts that are unilaterally determined by Fidelitone. Fidelitone
19 makes deductions from the Delivery Drivers’ pay for reasons including customer complaints, late
20 deliveries, and damaged items and property. Fidelitone requires Delivery Drivers to pay for payroll
21 administration services from Contractor Management Services LLC d/b/a Openforce and deducts
22 money from Delivery Drivers’ weekly pay for these services. This “flat rate” constitutes an unlawful
23 piece-rate compensation system because Delivery Drivers had no control over how many hours they
24 worked and could do nothing to change the amount of pay through their own efficiencies.

25 21. Fidelitone requires the Delivery Drivers to purchase multiple forms of insurance
26 coverage in amounts determined by Fidelitone through insurance plans specified and sometimes
27 negotiated by Fidelitone, and to name Fidelitone and its clients as additional “insureds.” Fidelitone
28 further requires the Delivery Drivers to purchase or rent from Fidelitone’s clients, certain tools and

1 equipment.

2 22. Fidelitone directs Delivery Drivers to engage helpers to deliver the assigned
3 merchandise. Fidelitone prohibits the Delivery Drivers from working with helpers who have not been
4 screened, qualified, and approved in advance by Fidelitone. Fidelitone expects helpers to follow the
5 same work methods and standards it requires the Delivery Drivers to follow and to comply with all
6 other requirements communicated by Fidelitone, including attendance at meetings held by Fidelitone
7 management.

8 23. Fidelitone permits Delivery Drivers to engage other Drivers and/or Helpers at their own
9 expense who have been screened, qualified, and approved by Fidelitone. Delivery Drivers may engage
10 such Drivers and/or Helpers so that they are able to take a day off from work, such as for example
11 when they are unable to come to work due to illness or so that they may have a day of rest. Fidelitone
12 expects Drivers and/or Helpers to follow the same work methods and standards it requires the Delivery
13 Drivers to follow and to comply with all other requirements communicated by Fidelitone, including
14 following instructions given by Fidelitone managers and attending mandatory meetings.

15 24. The Delivery Drivers are economically dependent for their financial livelihood on
16 Fidelitone, and Fidelitone is entirely dependent on the Delivery Drivers for the retail merchandise
17 delivery service provided by Fidelitone to its clients. The Delivery Drivers are terminable at will. They
18 may be terminated upon fifteen- or thirty-days written notice without cause or immediately for alleged
19 breaches of the broadly-worded standards and obligations described in the Agreement.

20 25. The Agreements typically remain in effect for one year and are automatically renewed
21 at the end of that period for another one-year term, unless either party gives notice of termination.
22 Most of the Delivery Drivers have worked, or did work, for Fidelitone for several years. Despite
23 Fidelitone's pervasive control over all aspects of its delivery service operation, including the details
24 of the Delivery Drivers' work, Fidelitone has classified and treated the Delivery Drivers as
25 "independent contractors." Fidelitone's classification and treatment of the Delivery Drivers as
26 "independent contractors" rather than as "employees" is and during all relevant times has been
27 unlawful.

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CLASS ACTION ALLEGATIONS

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2 26. Plaintiffs bring these claims as a class action pursuant to Code of Civil Procedure § 382
3 and Business and Professions Code §§ 17203 & 17204. Plaintiffs bring this action on Plaintiffs’ own
4 behalf and on behalf of the following class of individuals (the “Class” or “Class Members”):

5 All individuals employed by, or formerly employed by, Defendants as Contract Carriers,
6 Drivers, and/or Helpers who worked in the State of California from April 6, 2016, and
7 continuing while this action is pending.

8 27. All Delivery Drivers, i.e., Contract Carriers, Drivers, and Helpers, including Plaintiffs,
9 are putative class members.

10 28. During the Class Period, by virtue of unlawfully classifying Plaintiffs and Class
11 Members as independent contractors and compensating Class Members with a “flat rate” Defendants
12 have routinely failed to compensate Delivery Drivers all of the wages they are due (“off-the-clock”
13 work).

14 29. During the Class Period, Plaintiffs and Delivery Drivers were subject to Defendants’
15 unlawful company practice of classifying them as independent contractors and paying them a daily
16 flat sum of money when in fact they were subjected to the pervasive control of Defendants. All who
17 were subject to this unlawful classification and compensation scheme suffered damages. Defendants
18 applied this illegal wage device uniformly to all Delivery Drivers to the disadvantage of Class
19 Members.

20 30. As a result, during the Class Period, Defendants have failed to provide Drivers and
21 Helpers with accurate wage and hour statements since the daily “flat rate” did not fully compensate
22 Delivery Drivers for all hours worked. Defendants have failed to provide Delivery Drivers with
23 accurate wage and hour statements since the gross hours earned, total hours worked, all deductions
24 made, net wages earned, and all applicable hourly rates in effect during each pay period and the
25 corresponding number of hours worked at each hourly rate.

26 31. During the Class Period, Plaintiffs and Delivery Drivers have been required to work
27 more than eight hours per day and more than forty hours per workweek. Defendants have routinely
28 failed to compensate Delivery Drivers all of the overtime wages they are due.

1 32. During the Class Period, Defendants have failed to pay accrued wages and other
2 compensation due immediately to Delivery Drivers who were terminated, and Defendants have failed
3 to pay accrued wages and other compensation due within seventy-two hours to Delivery Drivers who
4 ended their employment.

5 33. The proposed class is ascertainable in that its members can be identified using
6 information contained in Defendants' payroll and personnel records.

7 34. Numerosity. The Delivery Drivers are so numerous, conservatively estimated to
8 include over 40 Delivery Drivers, that joinder of each individual Class Member would be
9 impracticable, and the disposition of their claims in a class action, rather than numerous individual
10 actions, will benefit the parties, the Court and the interests of justice.

11 35. Commonality. There is a well-defined community of interest in the questions of law
12 and fact involved in this action, because Defendants' failure to pay Delivery Drivers their wages or
13 afford them the protections required under the Employment Laws and Regulations affects all Class
14 Members. Common questions of law and fact predominate over questions that affect only individual
15 Delivery Drivers, because all Delivery Drivers were subject to the uniform, unlawful pay practices
16 and policies. The predominate questions of law and fact include, but are not limited to:

17 a. Whether Defendants devised a scheme and/or plan to circumvent California
18 wage and hour laws;

19 b. Whether Defendants' conduct was fraudulent and/or deceitful;

20 c. Whether Defendants' conduct violated the Employment Laws and
21 Regulations; and

22 (i) failed to compensate Plaintiffs and the Class Members
23 for all hours worked;

24 (ii) failed to compensate Plaintiffs and the Class Members at the
25 applicable and legally-mandated minimum hourly rate then
26 in effect;

27 (iii) failed to provide Plaintiffs and the Class Members with
28 timely and accurate wage and hour statements; and

1 (iv) failed to maintain complete and accurate payroll records for
2 Plaintiffs and the Class Members;

3 d. Whether Defendants' systematic acts and practices violate, *inter alia*,
4 California Business & Professions Code section 17200, *et seq.*

5 36. Typicality. Plaintiffs' claims are typical of those of the other Delivery Drivers because
6 all Delivery Drivers share the same or similar employment duties and activities, all are automatically
7 classified as independent contractors, and all have been denied the benefits and protections of the
8 Employment Laws and Regulations in the same manner. Since Defendants have uniformly applied
9 the same pay practices and policies to each Delivery Driver, Plaintiffs' claims are typical of the claims
10 of all Delivery Drivers. Plaintiffs' claims are also typical because Plaintiffs have suffered the same
11 damages as those suffered by all Class Members.

12 37. Adequacy of Representation. Plaintiffs can fairly and adequately represent and protect
13 the interests of all Delivery Drivers in that Plaintiffs do not have disabling conflicts of interest which
14 are antagonistic to those of all other Delivery Drivers. Plaintiffs seek no relief which is antagonistic
15 or adverse to the other Class Members, and the infringement of their rights and the damages they have
16 suffered are typical of all other Class Members. Plaintiffs' counsel is competent and experienced in
17 litigating class actions in California based on large employers' violations of the Employment Laws
18 and Regulations.

19 38. As mentioned above, to the extent that any Delivery Drivers entered into any arbitration
20 agreement with any Defendant and such agreement purports to require arbitration, such agreement is
21 void and unenforceable. Even if such agreement is deemed enforceable, however, class-wide
22 arbitration is appropriate and should be utilized to obtain class-wide relief.

23 39. Superiority of Class Action. The nature of this action and the nature of laws available
24 to Plaintiffs and the other Delivery Drivers in the putative Class make use of the class action a
25 particularly efficient and effective procedure because:

26 a. For many of the Delivery Drivers, individual actions or other
27 individual remedies would be impracticable and litigating individual
28 actions would be too costly;

- 1 b. The action involves a large corporate employer or employers (Fidelitone) and
2 a large number of individual employees (Plaintiffs and the other Class
3 Members), many with relatively small claims and all with common issues of
4 law and fact;
- 5 c. If the Delivery Drivers are forced to bring individual lawsuits, the
6 corporate defendants would necessarily gain an unfair advantage, the
7 ability to exploit and overwhelm the limited resources of individual
8 Class Members with vastly superior financial and legal resources;
- 9 d. The costs of individual suits would likely consume the amounts
10 recovered;
- 11 e. Requiring each Class Member to pursue an individual remedy would
12 also discourage the assertion of lawful claims by current employees
13 of Defendants, who would be disinclined to pursue an action against
14 their present and/or former employer due to an appreciable and
15 justified fear of retaliation and permanent damage to their immediate
16 and/or future employment; and
- 17 f. Common business practices Plaintiffs experienced are representative of
18 those experienced by all Delivery Drivers and can establish the right of all
19 Delivery Drivers to recover on the alleged claims.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGE**

22 **(CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ.; IWC WAGE ORDER NO. 9;**
23 **MINIMUM WAGE ORDER)**

24 40. The allegations of each of the preceding paragraphs are realleged and incorporated
25 herein by reference, and Plaintiff alleges as follows a claim of relief.

26 41. At all times relevant to this complaint, Cal. Labor Code §§ 1182.11, 1182.12, and 1197,
27 IWC wage order No. 9, and the Minimum Wage Order were in full force and effect and required that
28 Defendant's California nonexempt employees receive the minimum wage for all hours worked

1 irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate of ten
2 dollars (\$10) per hour for work performed up through January 1, 2017, ten dollars and fifty cents
3 (\$10.50) per hour for work performance up through January 1, 2018, eleven dollars (\$11) per hour for
4 work performed up through January 1, 2019, twelve dollars (\$12) per hour for work performed up
5 through January 1, 2020, and thirteen dollars (\$13) per hour for work performed thereafter.

6 42. Defendants failed to pay Plaintiffs and putative class members for all hours worked at
7 the statutory minimum wage rate, as required by law, including for work time spent at mandatory
8 meetings; work time spent waiting to receive assignments and merchandise at Defendant's client's
9 stores or warehouses; work time spent picking up and transporting "haul away" merchandise; and
10 work time spent returning paperwork to Defendant's client's stores at the end of the workday.

11 43. At various times throughout the relevant statutory period, Defendants have caused
12 Plaintiffs and putative class members to incur expenses and deductions that contributed to Defendants'
13 failing to pay minimum wages for all hours worked, as required by law.

14 44. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiffs
15 and putative class members have been deprived of minimum wages due in amounts to be determined
16 at trial, and to additional amounts as liquidated damages, pursuant to Cal. Labor Code §§ 1194 and
17 1194.2.

18 45. By violating Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No. 9,
19 § 4, and the Minimum Wage Order, Defendants are also liable for civil penalties, interest and
20 reasonable attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, 1197.1.

21 46. Plaintiffs request relief as described below.

22 **SECOND CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME COMPENSATION**

24 **(CAL. LABOR CODE §§ 510, 1194 ET SEQ.; IWC WAGE ORDER NO. 9.)**

25 47. The allegations of each of the preceding paragraphs are realleged and incorporated
26 herein by reference, and Plaintiffs allege as follows a claim of relief.

27 48. Defendants have been required, pursuant to Cal. Labor Code § 510 and IWC wage
28 order No. 9, § 3, to pay Plaintiffs and putative class members overtime compensation at a rate of 1.5

1 times their regular rates of pay for all hours worked in excess of eight in a day and in excess of 40 in
2 a week, and at a rate of two times their regular rates of pay for all hours worked in excess of 12 in a
3 day.

4 49. Defendants failed to pay Plaintiffs and putative class members daily or weekly
5 overtime compensation in violation of Cal. Labor Code § 510 and IWC wage order No. 9, § 3.

6 50. As a result of Defendants' unlawful acts, Plaintiffs and putative class members have
7 been deprived of overtime compensation in an amount to be determined at trial, and are entitled to
8 recovery of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor Code
9 § 1194.

10 51. By violating Cal. Labor Code § 510, Defendants are liable for civil penalties and
11 attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, and 1197.1.

12 52. Plaintiffs request relief as described below.

13 **THIRD CAUSE OF ACTION**

14 **REIMBURSEMENT OF EMPLOYMENT EXPENSES**

15 **(CAL. LABOR CODE § 2802)**

16 53. The allegations of each of the preceding paragraphs are realleged and incorporated
17 herein by reference, and Plaintiffs allege as follows a claim of relief.

18 54. Cal. Labor Code § 2802 provides: "An employer shall indemnify his or her employee
19 for all necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or her duties, or of his or her obedience to the directions of the employer . . . [which
21 includes] all reasonable costs, including, but not limited to, attorney's fees incurred by the employee
22 enforcing the rights granted by this section."

23 55. As a direct consequence of discharging their duties for Defendants and/or obeying
24 Defendants' directions, Plaintiffs and putative class members have necessarily incurred expenses for
25 which they have not been indemnified by Fidelitone, including the purchase and/or lease and
26 depreciation of vehicles; fuel, maintenance, and other vehicle operating costs; various forms of
27 insurance; wages paid to Delivery Drivers; costs associated with lost or damaged merchandise and
28 other property damage; Fidelitone proprietary uniforms; certain tools and equipment Defendants have

1 required Plaintiffs and class members to purchase or rent from Fidelitone’s clients; other
2 miscellaneous equipment including moving pads and blankets, dollies, hand tools, installation
3 supplies, GPS navigational equipment, and cellular telephones; fees for payroll administration
4 services; expenses associated with a cash bond or fund; and the attorneys’ fees incurred to enforce
5 Plaintiffs’ and putative class members’ rights under Cal. Labor Code § 2802.

6 56. Defendants have failed to indemnify or in any manner reimburse Plaintiffs and putative
7 class members for these expenditures and losses.

8 57. By requiring Plaintiffs and putative class members to pay expenses and cover losses
9 that they incurred in direct consequence of the discharge of their duties for Defendants and/or in
10 obedience of Defendants’ direction, Defendants have violated and continues to violate Cal. Labor
11 Code § 2802.

12 58. As a direct and proximate result of Defendants’ conduct, Plaintiffs and putative class
13 members have suffered substantial losses according to proof, as well as pre-judgment interest, costs,
14 and attorneys’ fees for the prosecution of this action, which losses are compensable under Cal. Labor
15 Code §2802.

16 59. Plaintiffs request relief as described below.

17 **FOURTH CAUSE OF ACTION**

18 **UNLAWFUL DEDUCTIONS FROM WAGES**

19 **(CAL. LABOR CODE §§ 221 & 223; IWC WAGE ORDER NO. 9)**

20 60. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and Plaintiffs allege as follows a claim of relief.

22 61. Cal. Labor Code § 221 provides: “It shall be unlawful for any employer to collect or
23 receive from an employee any part of wages theretofore paid by said employer to said employee.”

24 62. Cal. Labor Code § 223 provides: “Where any statute or contract requires an employer
25 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
26 purporting to pay the wage designated by statute or by contract.”

27 63. IWC wage order No. 9, § 8 provides that the only circumstance under which an
28 employer can make a deduction from an employee’s wage due to cash shortage, breakage, or loss of

1 equipment is if the employer can show that the shortage, breakage, or loss was the result of the
2 employee's gross negligence or dishonest or willful act.

3 64. These and related statutes, along with California's fundamental public policy
4 protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated or
5 unpredicted reductions in their wages; making employees the insurers of their employer's business
6 losses; otherwise passing the ordinary business losses of the employer onto the employee; taking
7 deductions from wages for business losses in any form unless the employer can establish that the loss
8 was caused by a dishonest or willful act, or gross negligence of the employee; or taking other
9 unpredictable deductions that may impose a special hardship on employees.

10 65. Defendants have violated Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9,
11 § 8 by unlawfully taking deductions from Plaintiffs' and putative class members' compensation to
12 cover certain ordinary business expenses of Defendants, including various forms of insurance;
13 uniforms; payment services; equipment and tools; losses associated with lost or damaged merchandise
14 and other property damage; gift cards and other payments given or reimbursed to customers who
15 complain or are dissatisfied with service they received; and "charge-back" items Defendants claim to
16 reserve the right to deduct from Plaintiff's and putative class members' pay.

17 66. Defendants have further violated Cal. Labor Code §§ 221 and 223 and IWC wage order
18 No. 9, § 8 by unlawfully taking deductions from Plaintiffs' and putative class members' compensation
19 for the purpose of establishing a reserve account to draw upon to cover ordinary business expenses,
20 including compensation to customers complaining of damages to their merchandise or to their homes.

21 67. Because Defendants made unlawful deductions from Plaintiffs' and putative class
22 members' compensation, they are liable to Plaintiffs and putative class members for the compensation
23 that should have been paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221 and
24 223 and IWC wage order No. 9, § 8.

25 68. By unlawfully deducting wages and failing to pay Plaintiffs and putative class
26 members, Defendants are also liable for penalties, interest and reasonable attorneys' fees and costs
27 under Cal. Labor Code §§ 218.5 and 1194.

28 69. Plaintiffs request relief as described below.

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FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(CAL. LABOR CODE §§ 226.7, 512; IWC WAGE ORDER NO. 9)

70. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

71. Plaintiffs and putative class members have regularly worked in excess of five (5) hours in a workday without being provided at least a half-hour meal period in which they were relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9, § 11(A).

72. Because Defendants failed to provide proper meal periods, they are liable to Plaintiffs and putative class members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 11(B).

73. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11, Defendants are also liable for penalties, reasonable attorneys’ fees, and costs under Cal. Labor Code §§ 218.5 and 1194.

74. Plaintiffs request relief as described below.

SIXTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(CAL. LABOR CODE § 226.7; IWC WAGE ORDER NO. 9)

75. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiffs allege as follows a claim of relief.

76. Plaintiffs and putative class members have regularly worked in excess of four (4) hours in a workday without Defendant’s authorizing and permitting them to take at least a ten minute rest period, as required by Cal. Labor Code § 226.7 and IWC wage order No. 9, § 12.

77. Because Defendants failed to authorize and permit proper rest periods, Defendants are liable to Plaintiffs and putative class members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not authorized and permitted, pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 12(B).

1 78. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11,
2 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
3 §§ 218.5 and 1194.

4 79. Plaintiffs request relief as described below.

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

7 **(CAL. LABOR CODE §§ 226, 226.3; IWC WAGE ORDER NO. 9)**

8 80. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference, and Plaintiffs allege as follows a claim of relief.

10 81. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-
11 monthly or at the time of each payment of wages to furnish each California employee with a statement
12 itemizing, among other things, the total hours worked by the employee. Cal. Labor Code § 226(b)
13 provides that if an employer knowingly and intentionally fails to provide a statement itemizing, among
14 other things, the total hours worked by the employee, then the employee is entitled to recover the
15 greater of all actual damages or fifty dollars (\$50) for the initial violation and one hundred dollars
16 (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

17 82. Defendants knowingly and intentionally failed to furnish Plaintiffs and putative class
18 members with timely, itemized statements that accurately report the total hours worked, as required
19 by Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B). As a result, Defendants are liable to
20 Plaintiffs and putative class members for the amounts provided by Cal. Labor Code § 226(b), including
21 an award of costs and reasonable attorneys' fees.

22 83. Plaintiffs request relief as described below.

23 **EIGHTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(CAL. LABOR CODE §§ 201, 202, 203)**

26 84. The allegations of each of the preceding paragraphs are realleged and incorporated
27 herein by reference, and Plaintiffs allege as follows a claim of relief.

28 85. Cal. Labor Code § 201 requires an employer who discharges a California employee to

1 pay all compensation due and owing to that employee immediately upon discharge.

2 86. Cal. Labor Code § 202 requires an employer to pay all compensation due and owing to
3 a California employee who quits within 72 hours of that employee’s quitting, unless the employee
4 provides at least 72 hours’ notice of quitting, in which case all compensation is due at the end of the
5 employee’s final day of work.

6 87. Cal. Labor Code § 203 provides that if an employer willfully fails to pay compensation
7 promptly upon discharge, as required by § 201 or § 202, then the employer is liable for waiting time
8 penalties in the form of continued compensation of up to 30 work days.

9 88. Defendants willfully failed to timely pay compensation and wages, including unpaid
10 minimum wage, unpaid overtime pay, unreimbursed expenses and unreimbursed reserve accounts,
11 unpaid premium pay for missed meal periods, and unpaid premium pay for missed rest periods to
12 Plaintiffs and similarly situated putative class members no longer in Defendants’ employ, upon
13 termination of their employment. As a result, Defendants are liable to Plaintiffs and similarly situated
14 putative class members for waiting time penalties, together with interest thereon and reasonable
15 attorneys’ fees and costs, under Cal. Labor Code §§ 203 and 256.

16 89. Plaintiffs request relief as described below.

17 **NINTH CAUSE OF ACTION**

18 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION ACT**

19 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-17209)**

20 90. The allegations of each of the preceding paragraphs are realleged and incorporated
21 herein by reference, and Plaintiffs allege as follows a claim of relief.

22 91. California Business & Professions Code § 17200 prohibits unfair competition in the
23 form of any unlawful, unfair, or fraudulent business act or practice.

24 92. California Business & Professions Code § 17204 allows “any person acting for the
25 interests of itself, its members or the general public” to prosecute a civil action for violation of the
26 Unfair Competition Law.

27 93. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
28 filing of this action, Defendants committed unlawful, unfair, and/or fraudulent business acts and

1 practices as defined by California Business & Professions Code § 17200, by engaging in the following:

- 2 a. Failing to pay California minimum wage and overtime compensation to
3 Plaintiffs and putative class members;
- 4 b. Failing to provide adequate off-duty meal periods to Plaintiffs and putative
5 class members, and failing to pay them premium pay for missed meal periods;
- 6 c. Failing to authorize and permit adequate rest periods to Plaintiffs and
7 putative class members, and failing to pay them premium pay for missed rest
8 periods;
- 9 d. Failing to indemnify Plaintiffs and putative class members for employment-
10 related business expenses and losses;
- 11 e. Improperly and unlawfully making deductions from Plaintiffs' and plaintiff
12 class members' compensation to cover certain ordinary business expenses and
13 losses of Defendant, which were not attributable to Plaintiffs' and putative class
14 members' dishonest or willful act, or to their gross negligence, as described above;
- 15 f. Improperly and unlawfully demanding a cash bond from Plaintiffs and
16 putative class members, and making deductions from such bonds in violation of the
17 Employee Bond Law, Cal. Labor Code §§ 400-410;
- 18 g. Coercing or compelling Plaintiffs and putative class members to patronize
19 Defendant's clients by requiring Delivery Drivers to purchase or rent certain tools
20 and equipment from Defendants' clients, and coercing or compelling Plaintiffs and
21 putative class members to patronize Contractor Management Services LLC d/b/a
22 Openforce by requiring the Delivery Drivers to purchase payroll administration
23 services from Contractor Management Services LLC d/b/a Openforce in violation
24 of Labor Code §450;
- 25 h. Failing to maintain workers' compensation insurance covering Plaintiff and
26 putative class members, requiring Plaintiffs and putative class members to purchase
27 workers' compensation insurance for themselves, and failing to pay compensation
28 to Plaintiffs and putative class members injured on the job;

- 1 i. Failing to contribute to the Unemployment Trust Fund on behalf of Plaintiffs and
- 2 putative class members;
- 3 j. Failing to pay all wages due upon termination of employment to Plaintiffs
- 4 and similarly situated putative class members no longer in Defendant’s employ;
- 5 k. Failing to provide accurate itemized wage statements to Plaintiffs and
- 6 putative class members;
- 7 l. Failing to keep accurate payroll records noting the actual hours worked by
- 8 Plaintiffs and putative class members, in violation of Cal. Labor Code § 1174 and
- 9 IWC wage order No. 9, § 7(A);
- 10 m. Failing to pay all wages for labor performed between the 1st and 15th days of
- 11 the month between the 16th and the 26th day of the month during which the labor
- 12 was performed, and failing to pay all wages for labor performed between the 16th
- 13 and the last day of the month between the 1st and 10th day of the following month,
- 14 as required by Cal. Labor Code § 204;
- 15 n. Willfully misclassifying Plaintiffs and putative class members as
- 16 “independent contractors” in violation of the California Employee
- 17 Misclassification Act, Cal. Labor Code § 226.8;
- 18 o. Failing to provide Plaintiffs and putative class members paid sick leave as required
- 19 by Cal. Labor Code § 246; and
- 20 p. Intentionally, recklessly and/or negligently misrepresenting to Plaintiffs and
- 21 putative class members the true nature of their employment status.

22 94. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts
23 and practices for purposes of Business & Professions Code § 17200.

24 95. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent acts
25 and practices described herein, Defendants have received and continue to hold ill-gotten gains
26 belonging to Plaintiffs and putative class members. As a direct and proximate result of Defendants’
27 unlawful business practices, Plaintiffs and putative class members have suffered economic injuries
28 including, but not limited to out-of-pocket business expenses, unlawful deductions from

1 compensation, loss of minimum wage and overtime wages, compensation for missed meal periods,
2 compensation for missed rest periods, loss of unemployment insurance benefits, loss of amounts paid
3 into cash bonds and interest thereon, waiting time penalties, and attorneys' fees and costs incurred to
4 enforce their rights, including their rights under Cal. Labor Code § 2802. Defendants have profited
5 from its unlawful, unfair, and/or fraudulent acts and practices in the amount of those business
6 expenses, improper deductions from compensation, unpaid minimum wage and overtime, unpaid
7 compensation for missed meal periods and missed rest periods, unpaid unemployment insurance and
8 workers' compensation premiums, cash bond payments, and interest accrued.

9 96. Plaintiffs and putative class members are entitled to restitution pursuant to Cal.
10 Business & Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful
11 deductions from compensation, minimum wage, overtime, meal period and rest period compensation,
12 unemployment insurance and workers' compensation premiums, cash bond payments, unpaid waiting
13 time penalties, interest since four years prior to the filing of this action, and attorney's fees and costs
14 Plaintiffs have incurred to enforce these rights, including their rights under Cal. Labor Code § 2802.

15 97. Plaintiffs and putative class members are entitled to enforce all applicable penalty
16 provisions of the California Labor Code pursuant to Business & Professions Code § 17202.

17 98. By all of the foregoing alleged conduct, Defendants have committed, and are
18 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning
19 of Cal. Business & Professions Code §17200 *et seq.*

20 99. As a direct and proximate result of the unfair business practices described above,
21 Plaintiffs and putative class members have suffered significant losses and Defendants have been
22 unjustly enriched.

23 100. Pursuant to Cal. Business & Prof. Code §17203, Plaintiffs are entitled to: (a) restitution
24 of money acquired by means of its unfair business practices, in amounts not yet ascertained but to be
25 ascertained at trial; (b) injunctive relief against Defendant's continuation of its unfair and unlawful
26 business practices; and (c) a declaration that Defendant's business practices are unfair and unlawful
27 within the meaning of the statute.

28 101. Plaintiffs assumed the responsibility of enforcement of the laws and lawful claims

1 specified herein. There is a financial burden incurred in pursuing this action which is in the public
2 interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil Procedure
3 § 1021.5.

4 102. Plaintiffs request relief as described below.

5 **TENTH CAUSE OF ACTION**

6 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

7 **(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

8 103. The allegations of each of the preceding paragraphs are realleged and incorporated
9 herein by reference, and Plaintiffs allege as follows a claim of relief.

10 104. Plaintiff has complied with the procedures for bringing suit specified in California
11 Labor Code Section 2699.3. By letters dated April 28, 2020, and July 29, 2020, Plaintiffs Luis
12 Venegas and Ashley Caballero, respectively, on behalf of themselves and the other aggrieved
13 employees, gave written notice by certified mail to the LWDA and to Defendants of the specific
14 provisions of the California Labor Code alleged to have been violated, including the facts and theories
15 to support the alleged violations.

16 105. More than sixty-five (65) calendar days have passed since Plaintiffs provided the
17 LWDA with written notice. To date, Plaintiffs have not received any written notice nor been notified
18 from the LWDA that it does intend to investigate the violations of the California Labor Code alleged
19 herein.

20 106. Plaintiffs, by virtue of their employment with Defendants, and Defendants' failure to
21 provide meal and rest periods, overtime compensation, all wages for all work performed at the
22 statutory minimum agreed upon rate, all wages due at termination, accurate itemized wage statements,
23 and reimbursements for business expenses, are aggrieved employees with standing to bring an action
24 under the Private Attorney General Act ("PAGA"). Plaintiffs, as representatives of the people of the
25 State of California, will seek any and all penalties otherwise capable of being collected by the Labor
26 Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of
27 the following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies
28 to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5, 210, 221,

1 222, 223, 226, 226.7, 226.8, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, and 2802.

2 107. Plaintiffs, as personal representatives of the general public, will and do seek to recover
3 any and all penalties for each and every violation shown to exist or to have occurred during the
4 statutory period, in an amount according to proof, as to those penalties that are otherwise only available
5 to public agency enforcement actions. Funds recovered will be distributed in accordance with PAGA,
6 with at least 75% of the penalties recovered being reimbursed to the State of California and the Labor
7 and Workforce Development Agency (LWDA).

8 108. Plaintiffs request relief as described below.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs, as individuals and on behalf of all Delivery Drivers, prays that
11 the Court enter judgment in their favor and against Defendants as follows:

- 12 1. For an Order requiring and certifying this action as a class action;
- 13 2. For an Order appointing Plaintiff’s counsel as Class Counsel;
- 14 3. For compensatory damages in an amount to be ascertained at trial;
- 15 4. For restitution in an amount to be ascertained at trial;
- 16 5. For punitive damages in an amount to be ascertained at trial;
- 17 6. For penalties as required by the applicable Wage Order or otherwise by law;
- 18 7. For prejudgment interest at the legal rate pursuant to California Labor Code section
19 218.6 and other applicable sections;
- 20 8. For reasonable attorney’s fees pursuant to California Labor Code § 1194;
- 21 9. For cost of suit incurred herein;
- 22 10. For disgorgement of profits garnered as a result of Defendants’ unlawful failure to
23 pay overtime premium compensation and meal and rest period compensation; and
- 24 11. For such further relief as the Court may deem appropriate.

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DEMAND FOR JURY TRIAL

Plaintiffs, as individuals and on behalf of all similarly situated individuals, demand jury trial of this matter.


DATED: October 8, 2021

**BOYAMIAN LAW, INC.
KIZIRIAN LAW FIRM. P.C.**

By: 
Armand R. Kizirian
Michael H. Boyamian

DATED: October 8, 2021

MARA LAW FIRM, PC

By: 
David Mara
Matthew Crawford

Attorneys for Plaintiffs

Exhibit 2

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO**

ASHLEY CABALLERO, AMERICA
CABALLERO, and LUIS VENEGAS,
individuals, on behalf of themselves, all others
similarly situated, all other aggrieved
employees, and the general public,

Plaintiffs,

v.

FIDELITONE LAST MILE, INC., a Delaware
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. CIVSB2102002

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: **INSERT**
Time: **INSERT**
Judge: Hon. David S. Cohn
Dept.: S26

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action Settlement came before this Court,
3 the Honorable David S. Cohn presiding, on INSERT, 2022. The Court having considered the
4 papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

5 1. The following Class is conditionally certified for purposes of settlement only: All
6 individuals who worked for Defendant Fidelitone Last Mile, Inc. (“Defendant”) as Contract
7 Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged
8 employees of Defendant) from July 31, 2016, through November 6, 2021, and all entities owned
9 and controlled by Contract Carriers which contracted directly with Defendant to perform freight
10 delivery services from July 31, 2016, through November 6, 2021.

11 2. The Court grants preliminary approval of the Settlement and the Class based upon
12 the terms set forth in the Settlement Agreement filed herewith. Capitalized terms shall have the
13 definitions set forth in the Settlement.

14 3. The Settlement appears to be fair, adequate and reasonable to the Class. The
15 Settlement falls within the range of reasonableness and appears to be presumptively valid,
16 subject only to any objections that may be raised at the final approval hearing and final approval
17 by this Court.

18 4. Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas are
19 conditionally approved as the Class Representatives for the Class.

20 5. The proposed Class Representative Enhancements of \$10,000 each payable to the
21 Plaintiffs for their services as the class representatives are conditionally approved.

22 6. David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H.
23 Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C., are
24 conditionally approved as Class Counsel for the Class.

25 7. The proposed awards of up to \$333,300 in attorneys’ fees and up to \$30,000 in
26 actual costs payable to Class Counsel are conditionally approved.

27 8. A final approval hearing on the question of whether the Settlement, attorneys’
28

1 fees and costs to Class Counsel, and the Class Representative Enhancements should be finally
2 approved as fair, reasonable and adequate as to Class Members is scheduled in Department S26
3 on the date and time set forth in Paragraph 15 below.

4 9. The Court confirms Phoenix Class Action Administration Solutions (“Phoenix”)
5 as the Settlement Administrator.

6 10. The proposed payment of no more than \$15,000 in costs to Phoenix for its
7 services as the Settlement Administrator is conditionally approved.

8 11. The Court hereby preliminarily approves the allocation of \$50,000 of the Gross
9 Settlement Fund to Plaintiffs’ PAGA claims. Of this amount, 75% will be paid to the Labor and
10 Workforce Development Agency (“LWDA”) and the remaining 25% will be distributed to the
11 Class Members who worked from April 28, 2019, through November 6, 2021 (the “Aggrieved
12 Employees”). At the Final Approval Hearing, the Court will determine the sufficiency of the
13 PAGA payment. If the Court decides to award less than the amounts set forth by the Parties, then
14 excess amount will become part of the available Net Settlement Amount.

15 12. The Court approves, as to form and content, the Notices in substantially the form
16 attached as Exhibit A the Settlement. The Court approves the procedure for Class Members to
17 participate in, to opt out of, and to object to, the Settlement as set forth in the Notice of
18 Settlement.

19 13. The Court directs the mailing of the Notice by first class mail to Class Members
20 in accordance with the implementation schedule set forth in Paragraph 15 below. The Court
21 finds the dates selected for the mailing and distribution of the Notice, as set forth in the
22 Implementation Schedule, meet the requirements of due process and provide the best notice
23 practicable under the circumstances and shall constitute due and sufficient notice to all persons
24 entitled thereto.

25 14. To facilitate administration of the Settlement pending final approval, the Court
26 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or
27 administrative proceedings (including, but not limited to, filing claims with the Division of
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1 Labor Standards Enforcement of the California Department of Industrial Relations) regarding
 2 claims released by the Settlement unless and until such Class Members have filed valid Requests
 3 for Exclusion with the Settlement Administrator and the time for filing valid Requests for
 4 Exclusion with the Settlement Administrator has elapsed. This provision shall not apply to
 5 claims not alleged in the Action.

6 15. The Court orders the following **Implementation Schedule** for further
 7 proceedings:

9 a.	Deadline for Defendant to submit Class Information to Settlement Administrator:	[10 business days after Preliminary Approval Order]
10 b.	Deadline for Settlement Administrator to Mail the Notice to Class Members	[30 calendar days after Preliminary Approval Order]
11 c.	Deadline for Class Members to Postmark Requests for Exclusion Forms	[45 calendar days after mailing of Notice to Class Members]
12 d.	Deadline for Receipt by Court and Counsel of any Objections to the Settlement	[45 calendar days after mailing of Notice to Class Members]
13 e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	[16 Court days before Final Approval Hearing]
14 f.	Deadline for Class Counsel to file Motion for Attorneys' Fees, Costs and Class Representative Payment	[16 Court days before Final Approval Hearing]
15 g.	Final Approval Hearing and Final Approval	_____, 2022

16 **IT IS SO ORDERED.**

17 Dated: _____, 2022

18 BY _____
 19 Honorable David S. Cohn
 20 San Bernardino Superior Court Judge

Exhibit 3

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement (“Settlement”) of *Ashley Caballero, America Caballero, and Luis Venegas vs. Fidelitone Last Mile, Inc.* Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the “Class” or “Class Members”):

All individuals who worked for Fidelitone as Contract Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged employees of Fidelitone) from July 31, 2016, through November 6, 2021, and all entities owned and controlled by Contract Carriers which contracted directly with Fidelitone to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 1
2. What Is This Case About?	Page 2
3. Am I a Class Member? Am I an Aggrieved Employee?	Page 2
4. How Does This Class Action Settlement Work?.....	Page 2
5. Who Are the Attorneys Representing the Parties?	Page 3
6. What Are My Options?.....	Page 3
7. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
8. How Do I Object to the Settlement?	Page 4
9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect to Receive From This Settlement?.....	Page 5
11. How Do I Get More Information About the Case or the Settlement?	Page 7

1. <i>Why Have I Received This Notice?</i>

Defendant’s records indicate that you may be a Class Member. The Settlement will resolve all Class Members’ Released Class Claims, as described below, during the Claims Period.

A Preliminary Approval Hearing was held on [INSERT], in the California Superior Court, County of San Bernardino. The Court conditionally certified the Classes for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2022 at [TIME a.m./p.m.], located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action was filed by Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas. The complaint alleged causes of action on behalf of Plaintiffs and those similarly situated for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Reimburse Business Expenses; (4) Unlawful Deductions from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage Statements; (8) Waiting Time Penalties; (9) Violation of Unfair Competition Law; and (10) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from July 31, 2016, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

If you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from April 28, 2019, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from April 28, 2019, through November 6, 2021, you are also an "Aggrieved Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals as defined in Section 3 above. Plaintiffs and these individuals comprise a "Class" and are "Class Members." The settlement of this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement

documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

The Court has decided that David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H. Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C. are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiffs	Attorneys for Defendant
<p style="text-align: center;">MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048</p> <p style="text-align: center;">BOYAMIAN LAW, INC. Michael H. Boyamian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203 Telephone: (818) 547-5300 Facsimile: (818) 547-5678</p> <p style="text-align: center;">KIZIRIAN LAW FIRM, P.C. Armand R. Kizirian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203-1922 Telephone: (818) 221-2800 Facsimile: (818) 221-2900</p>	<p style="text-align: center;">NIXON PEABODY LLP Seth L. Neulight One Embarcadero Center, Suite 1800 San Francisco, CA 94111 Telephone: (415) 984-8200 Facsimile: (415) 984-8300</p>

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as

defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below.

- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

To opt-out of the Settlement, a Class Member must provide the Settlement Administrator at [address] with a Timely Written Request To Opt Out (*i.e.*, it must be postmarked no later than 45 days after the First Mailing Date or [the Response Deadline]). In order to be valid, a Timely Written Request to Opt Out must state the Class Member name, contain the last four digits of his/her social security number, be dated and signed by the Class Member and be timely received by the Settlement Administrator. All Class Members shall be bound by all of the terms of the Settlement Agreement and Judgment unless a Timely Written Request to Opt Out is received by the Settlement Administrator.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of April 28, 2019, through November 6, 2021, you will receive a portion of the PAGA Fund and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting a written Objection to the Settlement Administrator at [address]. All objections to the Settlement must be submitted to the Settlement Administrator no later than 45 days after the Settlement Administrator’s First Mailing Date of the Class Notice, or [the Response Deadline]. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the Objection, the Class Member will receive a Settlement payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; unjust enrichment; as well as any and all remedies available at law or equity on any of the foregoing claims, including without limitation, compensatory damages, wages, penalties, liquidated damages, interest, costs, attorneys' fees, restitution, punitive damages, declaratory relief, and injunctive relief, but only to the extent that such causes of action or claims for relief were asserted or reasonably could have been asserted by Plaintiffs or Class Members in the Action and/or Related Cases based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the Claims Period.

If you are an Aggrieved Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; and unjust enrichment, based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the PAGA Period.

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,000,000 ("Gross Settlement Fund" or "GSF").

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Fund, available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payments to each named Plaintiff in an amount up to \$10,000 each, for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$20,000; (3) a payment of \$50,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$333,300 (33 1/3% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

¹ "Released Parties" means Defendant Fidelitone Last Mile, Inc. and its predecessors and successors, as well as all of its current, former and future subsidiaries, affiliates, and parent companies, and each of their respective officers, directors, shareholders, members, partners, insurers, agents, administrators, executors and assigns.

The PAGA Settlement Mount means the portion of the Gross Settlement Fund which is allocated to the compromise and release of Plaintiffs' claims in the Action and Related Cases for PAGA Penalties, i.e., Fifty Thousand Dollars (\$50,000). Of this \$50,000, 75%, or \$37,500, will be paid to the Labor and Workforce Development Agency ("LWDA") (the "LWDA Payment"), and the remaining 25%, or \$12,500, will be distributed to the Aggrieved Employees (the "Aggrieved Employee Payment").

A. How Will Settlement Payments Be Calculated?

The NSA and Aggrieved Employee Payments shall be divided, for distribution to Settlement Class Members and Aggrieved Employees, into two parts as follows: (a) 55% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Contract Carriers; and (b) 45% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Drivers and/or Helpers. Each of the aforementioned portions of the Net and PAGA Settlement Amounts shall be allocated and paid to Settlement Class Members and Aggrieved Employees in accordance with formulas specified below.

Individual Settlement Shares to Class Members: After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionally distributed to the Class Members. The Settlement Administrator will calculate the amount of the Individual Settlement Share due to each Settlement Class Member based on the Workweeks of Settlement Class Member during the Claims Period, as reflected in Fidelitone's records. Specifically, each Settlement Class Member's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Net Settlement Amount (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Settlement Class Member, and "y" equals the total number of Workweeks in which all Settlement Class Members worked for Fidelitone.

PAGA Settlement Shares to Aggrieved Employees: The Aggrieved Employee Payment will be proportionally distributed to the Aggrieved Employees. The Settlement Administrator will calculate the amount of the PAGA Settlement Share due to each Aggrieved Employee based on the Workweeks of Aggrieved Employee during the PAGA Period, as reflected in Fidelitone's records. Specifically, each Aggrieved Employee's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Aggrieved Employee Payment (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Aggrieved Employee, and "y" equals the total number of Workweeks in which all Aggrieved Employees worked for Fidelitone.

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member's and/or Aggrieved Employee's Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Settlement Class Member's Individual Settlement Share will be apportioned as follows: 40% wages, 30% interest, and 30% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Fidelitone shall pay the employer portion of all such tax withholdings on the Individual Settlement Share amounts paid as wages separate from, and in addition to, the Gross Settlement Fund. Payments of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the

tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Settlement Share.

Each Aggrieved Employee's PAGA Settlement Share will be apportioned as follows: 100% penalties. The PAGA Settlement Share amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the Claims Period.

If you are also an Aggrieved Employee, you will receive a share of the Aggrieved Employee Payment. Based upon the calculation above, your approximate share of the Aggrieved Employee Payment, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] workweeks during the PAGA Period.

Checks issued to Settlement Class Members and Aggrieved Employees shall be valid for 120 days. If, after this 120 day period, the total amount of remaining from any uncashed checks equals or exceeds Ten Thousand Dollars (\$10,000), the Settlement Administrator shall re-distribute the residue to Settlement Class Members and Aggrieved Employees. If the total amount of the residue funds is less than Ten Thousand Dollars (\$10,000), those funds shall be distributed in accordance with Section 384 of the California Code of Civil Procedure to Legal Aid at Work, the cy pres recipient selected by the Parties, subject to Court approval.

12. *How Do I Get More Information About the Case or the Settlement?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Fidelitone Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 or at the Settlement Administrator's Website: [REDACTED]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVSB2102002.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected by whether you act or don't act.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

IN ORDER TO RECEIVE A SETTLEMENT PAYMENT, YOU MUST SUBMIT THE ENCLOSED IRS W-9 FORM TO THE SETTLEMENT ADMINISTRATOR OR SUBMIT YOUR TAXPAYER IDENTIFICATION NUMBER ONLINE AT [www. \[REDACTED\].com](http://www. [REDACTED].com).

The California Superior Court, County of San Bernardino has granted preliminary approval to a proposed settlement (“Settlement”) of *Ashley Caballero, America Caballero, and Luis Venegas vs. Fidelitone Last Mile, Inc.* Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (collectively these individuals are referred to as the “Class” or “Class Members”):

All individuals who worked for Fidelitone as Contract Carriers, Drivers and/or Helpers in the State of California (but excluding acknowledged employees of Fidelitone) from July 31, 2016, through November 6, 2021, and all entities owned and controlled by Contract Carriers which contracted directly with Fidelitone to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

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1. *Why Have I Received This Notice?*

Defendant's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Class Claims, as described below, during the Claims Period.

A Preliminary Approval Hearing was held on [INSERT], in the California Superior Court, County of San Bernardino. The Court conditionally certified the Classes for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [DATE], 2022 at [TIME a.m./p.m.], located at 247 W 3rd Street, San Bernardino, CA 92415. The Final Approval Hearing may be continued without further notice to the Class Members. You are advised to check the Court's website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

2. *What Is This Case About?*

The Class Action was filed by Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas. The complaint alleged causes of action on behalf of Plaintiffs and those similarly situated for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime; (3) Failure to Reimburse Business Expenses; (4) Unlawful Deductions from Wages; (5) Failure to Provide Meal Periods; (6) Failure to Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage Statements; (8) Waiting Time Penalties; (9) Violation of Unfair Competition Law; and (10) Violations of the Private Attorneys General Act, Labor Code §2699, et seq. ("PAGA").

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial. Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from July 31, 2016, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from July 31, 2016, through November 6, 2021.

If you worked for Defendant in the State of California as a Contract Carrier, Driver and/or Helper (but not an acknowledged employee of Defendant) from April 28, 2019, through November 6, 2021, or were/are an entity owned and controlled by Contract Carriers which contracted directly with Defendant to perform freight delivery services during the from April 28, 2019, through November 6, 2021, you are also an "Aggrieved Employee" under the settlement.

4. *How Does This Class Action Settlement Work?*

In this Action, Plaintiffs sued on behalf of themselves and all other similarly situated individuals as defined in Section 3 above. Plaintiffs and these individuals comprise a "Class" and are "Class Members." The settlement of

this Action resolves the Released Class Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact Class Counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

The Court has decided that David Mara and Matthew Crawford of Mara Law Firm, PC, Michael H. Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian Law Firm, P.C. are qualified as Class Counsel to represent you and all other Class Members simultaneously.

Class Counsel / Attorneys for Plaintiffs	Attorneys for Defendant
<p>MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048</p> <p>BOYAMIAN LAW, INC. Michael H. Boyamian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203 Telephone: (818) 547-5300 Facsimile: (818) 547-5678</p> <p>KIZIRIAN LAW FIRM, P.C. Armand R. Kizirian 550 North Brand Boulevard, Suite 1500 Glendale, California 91203-1922 Telephone: (818) 221-2800 Facsimile: (818) 221-2900</p>	<p>NIXON PEABODY LLP Seth L. Neulight One Embarcadero Center, Suite 1800 San Francisco, CA 94111 Telephone: (415) 984-8200 Facsimile: (413) 984-8300</p>

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating

in this Settlement.

- **SUBMIT W9 FORM:** The Settlement Administrator does not have your taxpayer identification number (“TIN”) and you **must** submit your TIN to receive a Settlement payment from this Settlement. Fill out the enclosed IRS W-9 Form and return it to the Settlement Administrator. Alternatively, you can go onto the settlement website (www. [redacted].com) and submit your TIN there. If you have questions about how to fill out the IRS W-9 Form or how to submit your TIN online, please call the Settlement Administrator at [phone number].
- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims and Released PAGA Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims and Released PAGA Claims as defined in Section No. 9 below. **NOTE: If you do not submit your TIN, you will not receive your Settlement Payment and will still be bound by the release of the Released Claims as defined in Section No. 10, below, and the Final Judgment**
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment and be bound by the Released PAGA Claims, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

The procedures for submitting the IRS W-9 Form, opting out and objecting are set forth below in the sections entitled “How Do I Submit My Taxpayer Identification Number to Receive a Settlement Payment?,” “How Do I Opt Out or Exclude Myself From This Settlement?,” and “How Do I Object To The Settlement?”

7. *How Do I Submit My Taxpayer Identification Number to Receive a Settlement Payment?*

The Settlement Administrator does **not** have your Taxpayer Identification Number (“TIN”) on file. In most circumstances, this number is your Social Security Number. This information is **required** to issue you a Settlement payment, for income tax reporting purposes. You **must** submit to the Settlement Administrator the enclosed IRS W-9 Form or submit your TIN online at www. [redacted].com in order to receive your Settlement payment. If you have questions about how to fill out the IRS W-9 Form or how to submit your TIN online, please call the Settlement Administrator at [phone number].

Fill in the requested information enclosed in the IRS W-9 Form, sign and mail/fax it to the Settlement Administrator:

Fidelitone Settlement Administrator
c/o Phoenix Settlement Administrators
1411 N. Batavia Street, Suite 105

If you do **not** submit the enclosed IRS 1-9 Form or submit your TIN online and the Settlement Administrator does **not** have a TIN on file for you, the Settlement Administrator will **not** mail you a Settlement check. Your Settlement payment will become forfeit and will be deposited with the *cy pres* beneficiary, Legal Aid at Work.

8. *How Do I Opt Out Or Exclude Myself From This Settlement?*

To opt-out of the Settlement, a Class Member must provide the Settlement Administrator at [address] with a Timely Written Request To Opt Out (*i.e.*, it must be postmarked no later than 45 days after the First Mailing Date or [the Response Deadline]). In order to be valid, a Timely Written Request to Opt Out must state the Class Member name, contain the last four digits of his/her social security number, be dated and signed by the Class Member and be timely received by the Settlement Administrator. All Class Members shall be bound by all of the terms of the Settlement Agreement and Judgment unless a Timely Written Request to Opt Out is received by the Settlement Administrator.

The proposed settlement includes the settlement of claims for civil penalties under the PAGA. You may not request to be excluded from the settlement of a PAGA claim. Thus, if the court approves of the settlement, even if you request exclusion from the settlement, if you worked during the PAGA Period of April 28, 2019, through November 6, 2021, you will receive a portion of the PAGA Fund and will be deemed to have released the PAGA Released Claims. A request for exclusion will preserve your right to individually pursue only the remaining class claims.

9. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting a written Objection to the Settlement Administrator at [address]. All objections to the Settlement must be submitted to the Settlement Administrator no later than 45 days after the Settlement Administrator's First Mailing Date of the Class Notice, or [the Response Deadline]. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members who timely file valid objections to the Settlement may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. If the Court rejects the Objection, the Class Member will receive a Settlement payment and will be bound by the terms of the Settlement.

10. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims. The Released Class Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu

¹ "Released Parties" means Defendant Fidelitone Last Mile, Inc. and its predecessors and successors, as well as all of its current, former and future subsidiaries, affiliates, and parent companies, and each of their respective officers, directors, shareholders, members, partners, insurers, agents, administrators, executors and assigns.

thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; unjust enrichment; as well as any and all remedies available at law or equity on any of the foregoing claims, including without limitation, compensatory damages, wages, penalties, liquidated damages, interest, costs, attorneys' fees, restitution, punitive damages, declaratory relief, and injunctive relief, but only to the extent that such causes of action or claims for relief were asserted or reasonably could have been asserted by Plaintiffs or Class Members in the Action and/or Related Cases based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the Claims Period.

If you are an Aggrieved Employee, you will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims, even if you opt-out of the settlement. The Released PAGA Claims are:

Any and all claims for: unpaid minimum wages; unpaid overtime wages; unlawful deductions from wages; failure to reimburse work-related expenses; failure to provide meal periods or pay premium wages in lieu thereof; failure to authorize and permit rest periods or pay premium wages in lieu thereof; failure to furnish accurate itemized wage statements; failure to pay all final wages due upon termination; and unfair, unlawful or fraudulent business acts or practices; conversion; common count; fraud; breach of contract; and unjust enrichment, based upon any of the conduct alleged therein which arose out of their work for Fidelitone in the State of California during the PAGA Period.

11. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$1,000,000 ("Gross Settlement Fund" or "GSF").

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Fund, available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payments to each named Plaintiff in an amount up to \$10,000 each, for prosecution of the Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$20,000; (3) a payment of \$50,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$333,300 (33 1/3% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

The PAGA Settlement Mount means the portion of the Gross Settlement Fund which is allocated to the compromise and release of Plaintiffs' claims in the Action and Related Cases for PAGA Penalties, i.e., Fifty Thousand Dollars (\$50,000). Of this \$50,000, 75%, or \$37,500, will be paid to the Labor and Workforce Development Agency ("LWDA") (the "LWDA Payment"), and the remaining 25%, or \$12,500, will be distributed to the Aggrieved Employees (the "Aggrieved Employee Payment").

A. How Will Settlement Payments Be Calculated?

The NSA and Aggrieved Employee Payment shall be divided, for distribution to Settlement Class Members and Aggrieved Employees, into two parts as follows: (a) 55% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Contract Carriers; and (b) 45% to those Settlement Class Members and Aggrieved Employees who worked for Fidelitone during the Claims Period and/or PAGA Period as Drivers and/or Helpers. Each of the aforementioned portions of the Net

and PAGA Settlement Amounts shall be allocated and paid to Settlement Class Members and Aggrieved Employees in accordance with formulas specified below.

Individual Settlement Shares to Class Members: After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionally distributed to the Class Members. The Settlement Administrator will calculate the amount of the Individual Settlement Share due to each Settlement Class Member based on the Workweeks of Settlement Class Member during the Claims Period, as reflected in Fidelitone's records. Specifically, each Settlement Class Member's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Net Settlement Amount (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Settlement Class Member, and "y" equals the total number of Workweeks in which all Settlement Class Members worked for Fidelitone.

PAGA Settlement Shares to Aggrieved Employees: The Aggrieved Employee Payment will be proportionally distributed to the Aggrieved Employees. The Settlement Administrator will calculate the amount of the PAGA Settlement Share due to each Aggrieved Employee based on the Workweeks of Aggrieved Employee during the PAGA Period, as reflected in Fidelitone's records. Specifically, each Aggrieved Employee's Settlement Award will be calculated by multiplying the fraction x/y by the total of the applicable portion of Aggrieved Employee Payment (*i.e.*, 55% for Contract Carriers or 45% for Drivers/Helpers, as applicable), where "x" equals the total number of Workweeks for each Aggrieved Employee, and "y" equals the total number of Workweeks in which all Aggrieved Employees worked for Fidelitone.

One day worked in a given week will be credited as a week for purposes of these calculations. Therefore, the value of each Class Member's and/or Aggrieved Employee's Settlement payment ties directly to the amount of weeks that he or she worked.

B. How Will My Settlement Payment Be Taxed?

Each Settlement Class Member's Individual Settlement Share will be apportioned as follows: 40% wages, 30% interest, and 30% penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Fidelitone shall pay the employer portion of all such tax withholdings on the Individual Settlement Share amounts paid as wages separate from, and in addition to, the Gross Settlement Fund. Payments of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The Individual Settlement Share amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund. Only the employee share of payroll tax withholdings shall be withheld from each Settlement Class Member's Individual Settlement Share.

Each Aggrieved Employee's PAGA Settlement Share will be apportioned as follows: 100% penalties. The PAGA Settlement Share amounts shall be reported on IRS 1099 Forms issued by the Settlement Administrator on behalf of the qualified settlement fund.

C. What Is My Settlement Payment?

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED],

less taxes. This is based on the Class Data which shows you worked [redacted] workweeks during the Claims Period.

If you are also an Aggrieved Employee, you will receive a share of the Aggrieved Employee Payment. Based upon the calculation above, your approximate share of the Aggrieved Employee Payment, is as follows: \$ [redacted]. This is based on the PAGA Data which shows you worked [redacted] workweeks during the PAGA Period.

D. What Happens If I Don't Submit the Enclosed IRS W-9 Form?

It is strongly encouraged that you submit the enclosed IRS W-9 Form. If you do not submit this form within 120 calendar days after the settlement checks are mailed to Participating Class Members, your settlement check will be deposited with Legal Aid at Work. If you have any questions about this, please contact the Settlement Administrator.

13. *How Do I Get More Information About the Case or the Settlement?*

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the Fidelitone Class Action Settlement.

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 247 W 3rd Street, San Bernardino, CA 92415 or at the Settlement Administrator's Website: [redacted]. You may also contact Class Counsel, whose contact information is above, and they will provide you with a copy of the Settlement documents or case documents free of charge. You can also visit the Court's website at <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. Click the "Accept" button at the bottom of the screen, then click "Click here to access the Portal (Classic)." Click the "Smart Search" button, then enter the case number CIVSB2102002.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

IRS W-9 FORM

To timely receive payment, please complete the substitute IRS Form W-9 form below.
Sign and mail or fax this form to:

Fideltione Settlement Administrator
c/o Phoenix Settlement Administrators
1411 N. Batavia Street, Suite 105
Orange, CA 92867
Fax: **INSERT**

Taxpayer Identification Number Certification - Substitute IRS Form W-9

Enter your Social Security Number (SSN) or Employer Identification Number (EIN):
SSN: _ _ _ - - _ _ - - _ _ _ _ _ OR EIN: _ _ - - _ _ _ _ _

Check Appropriate box: Individual/Sole Prop. Other

Print name as shown on your income tax return if different from
Payee: _____

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is my correct taxpayer identification number,
and
2. I am a U.S. person (including a U.S. resident alien). Please Check one: Yes No

Signature: _____

Exhibit 4

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO**

ASHLEY CABALLERO, AMERICA
CABALLERO, and LUIS VENEGAS,
individuals, on behalf of themselves, all
others similarly situated, all other
aggrieved employees, and the general
public,

Plaintiffs,

v.

FIDELITONE LAST MILE, INC., a
Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. CIVSB2102002

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
ENHANCEMENTS, AND ENTERING OF
FINAL JUDGMENT**

Date: **INSERT**
Time: **INSERT**
Judge: Hon. David S. Cohn
Dept.: S26

1 **ORDER**

2 This matter came on for hearing on INSERT, 2022, at INSERT, in Department S26 of the
3 above-captioned Court on Plaintiffs’ Motion for Final Approval of Class Action Settlement,
4 Attorneys’ Fees, Costs, Class Representative Enhancements, and Entering of Judgment pursuant
5 to: (1) California Rule of Court 3.769(g); (2) the Order Granting Plaintiffs’ Motion for
6 Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class
7 Notice, Setting of Final Approval Hearing Date (hereinafter referred to as the “Preliminary
8 Approval Order”); and (3) the Settlement Agreement.

9 Having received and considered the Settlement Agreement, the supporting papers filed by
10 the Parties, and the evidence and argument received by the Court in conjunction with the Motion
11 for Preliminary Approval of Class Action Settlement; and Plaintiffs’ Motion for Final Approval,
12 Attorneys’ Fees, Costs, Class Representative Enhancements, and Entering of Judgment, the
13 Court grants final approval of the Settlement and HEREBY ORDERS AND MAKES THE
14 FOLLOWING DETERMINATIONS:

15 1. Pursuant to the Preliminary Approval Order, the Notice of Class Action
16 Settlement (hereinafter referred to as the “Notice”) was mailed to all members of the Class by
17 first-class U.S. mail. The Notice informed the Class of the terms of the Settlement, of their right
18 to receive their proportional Settlement Payment, of their right to request exclusion from the
19 Class and the Settlement, of their right to comment upon or object to the Settlement and to
20 appear in person or by counsel at the final approval hearing and of the date set for the Final
21 Approval hearing. Adequate periods of time were provided by each of these procedures.

22 2. In response to the Notice, no members of the Class filed a written objection to the
23 Settlement, no class members stated an intention to appear at the final approval hearing, and only
24 INSERT member(s) of the Class requested to be excluded from the Settlement.

25 3. The Court finds and determines that this notice procedure afforded adequate
26 protections to Class Members and provides the basis for the Court to make an informed decision
27 regarding approval of the Settlement based on the Class Members’ response. The Court finds and
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1 determines that the Notice provided in conjunction with preliminary approval was the best notice
2 practicable, which satisfied the requirements of law and due process.

3 4. The Court further finds and determines that the terms of the Settlement
4 Agreement are fair, reasonable and adequate to the Class and to each Class Member and that the
5 settlement is ordered finally approved, and that all terms and provisions of the Settlement
6 Agreement should be and hereby are ordered to be consummated.

7 5. The Court has certified a Class, as that term is defined in and by the terms of the
8 Settlement Agreement, and the Court deems this definition sufficient for purposes of California
9 Rule of Court 3.765(a).

10 6. The Court hereby approves the terms set forth in the Settlement Agreement and
11 finds that the Settlement is, in all respects, fair, adequate, and reasonable, and directs the Parties
12 to effectuate the settlement according to its terms. The Court finds that the settlement was
13 reached as a result of informed and non-collusive arm's-length negotiations facilitated by a
14 neutral mediator. The Court further finds that the Parties conducted extensive investigation,
15 research, and discovery and that their attorneys were able to reasonably evaluate their respective
16 positions. The Court also finds that settlement will enable the Parties to avoid additional and
17 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to
18 litigate the case. The Court has reviewed the monetary recovery provided as part of the
19 settlement and recognizes the significant value accorded to the Class.

20 7. The Court hereby confirms David Mara and Matthew Crawford of Mara Law
21 Firm, PC, Michael H. Boyamian of Boyamian Law, Inc., and Armand R. Kizirian of Kizirian
22 Law Firm, P.C. as Class Counsel in this action.

23 8. The Court hereby confirms Plaintiffs Ashley Caballero, America Caballero, and
24 Luis Venegas as the Class Representatives in this action.

25 9. The Court finds and determines that the individual Settlement Payments provided
26 for by the terms of the Settlement Agreement to be paid to Participating Class Members are fair
27 and reasonable. The Court hereby gives final approval to and orders the payment of those
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1 amounts be made to the Participating Class Members in accordance with the terms of the
2 Settlement.

3 10. The Court finds and determines that payment to the California Labor and
4 Workforce Development Agency of \$INSERT as its share of the settlement of civil penalties in
5 this case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders
6 that the payment of that amount be paid in accordance with the Settlement.

7 11. The Court finds and determines the Class Representative Enhancements in the
8 sum of \$INSERT each to Plaintiffs Ashley Caballero, America Caballero, and Luis Venegas are
9 fair and reasonable. The Court hereby orders the Administrator to make these payments to the
10 Plaintiffs/Class Representatives in accordance with the terms of the Settlement Agreement.

11 12. The Court finds and determines that the payment to be paid to the Settlement
12 Administrator, Phoenix Class Action Administration Solutions, in the sum of \$INSERT for its
13 fee and expenses incurred is fair and reasonable. The Court hereby orders the Administrator to
14 make this payment to itself in accordance with the terms of the Settlement Agreement.

15 13. Pursuant to the terms of the Settlement, and the authorities, evidence and
16 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in
17 the sum of \$INSERT and litigation costs of \$INSERT. The Court finds such amounts to be fair
18 and reasonable. The Court hereby orders the Settlement Administrator to make these payments in
19 accordance with the terms of the Settlement Agreement.

20 14. Neither Defendant nor any related persons or entities shall have any further
21 liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or
22 liability, except as provided for by the Settlement Agreement.

23 15. Nothing in this Order shall preclude any action to enforce the Parties' obligations
24 pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that
25 Defendant make payments to Participating Class Members in accordance with the Settlement
26 Agreement.

27 16. The Court hereby enters final judgment in this case in accordance with the terms
28 of the Settlement Agreement, Preliminary Approval Order and this Order.

1 17. The Parties shall bear their own costs and attorneys’ fees except as otherwise
2 provided for by the Settlement Agreement and this Court’s Order Granting Final Approval.

3 18. Without affecting the finality of this Order in any way, the Court retains
4 jurisdiction of all matters relating to the interpretation, administration, implementation,
5 effectuation and enforcement of this order and the Settlement.

6 **JUDGMENT**

7 19. This document shall constitute a judgment for purposes of California Rules of
8 Court, Rule 3.769(h). In accordance with, and for the reasons stated in this Order, judgment shall
9 be entered within the meaning and for purposes of Code of Civil Procedure sections 577,
10 904.1(a), and Rules 3.769, and 8.104 of the California Rules of Court whereby named
11 Plaintiff/Class Representative and all Class Members shall take nothing from Defendant except
12 as expressly set forth in the Settlement Agreement filed on February 23, 2021, in conjunction
13 with Plaintiff’s Motion for Preliminary Approval of the Class Action Settlement. The Court
14 pursuant to California Rule of Court 3.769(h) shall retain jurisdiction over the parties to enforce
15 the terms of the judgment.

16
17 Dated: _____

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19 BY ORDER OF THE COURT
20 HON. DAVID S. COHN
21 SUPERIOR COURT OF CALIFORNIA
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