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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MARIA PEREZ and CRISTAL PEREZ
AGUIRRE, individually and on behalf of all
others similarly situated;

Plaintiff,

vs.

ODW LOGISTICS, INC., an Ohio
corporation; STAFFING LEADERSHIP
GROUP, LLC; and DOES 1 through 50,
inclusive,

Defendants.

ROCIO OROZCO, individually and on behalf
of others similarly situated, and as a private
attorney general;

Plaintiff,

vs.

ODW LOGISTICS, INC., an Ohio
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CIVDS2001904 (Lead Case)
CIVDS2004281

*Assigned for all purposes to the
Honorable David Cohn, Dept. S26*

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

Date: December 30, 2020
Time: 10:00 a.m.
Dept: S-26

FAC Filed: 1/21/20
Trial Date: None

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7 MARIA PEREZ and CRISTAL PEREZ AGUIRRE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 30, 2020 at 10:00 a.m. in Department S-26 of the above-captioned Court located at 247 West Third St. San Bernardino, California 92415, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Named Plaintiffs Maria Perez, Rocio Orozco and Cristal Perez Aguirre (“Plaintiffs”) will and hereby do move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendants ODW Logistics, Inc. and Staffing Leadership Group, LLC (“Defendants”).

Specifically, Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit 1 to the Declaration of Heather Davis ISO Motion for Preliminary Approval (“Davis Dec.”);

2. Certifying a Class for Settlement purposes;

3. Appointing Plaintiffs Maria Perez, Rocio Orozco and Cristal Perez Aguirre as the Class Representatives for Settlement purposes;

4. Appointing Heather Davis, Amir Nayebdadash, and S. Emi Minne of Protection Law Group, LLP and Benjamin Smith and Louis Benowitz of Smith & Benowitz as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Proposed Class Action Settlement (“Class Notice”) attached as Exhibit A to the Settlement Agreement to be mailed to the Class;

6. Approving the proposed Workweek Dispute Form attached as Exhibit B to the Settlement Agreement to be mailed to the Class;

7. Approving the opt-out and objection procedures provided in the Settlement Agreement set forth in the Notice;

7. Directing Defendants to furnish the name, last known address, last known home telephone number, number of Workweeks as a class member during the class period, social security number of all Settlement Class Members to the Settlement Administrator within fourteen (14) calendar days after the Court grants preliminary approval of the Settlement as well as any other information the Settlement Administrator may reasonably need to administer this Settlement; and

8. Setting a Final Approval Hearing.

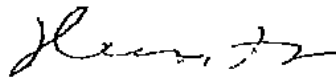
Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the California Labor Workforce Development Agency via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on December 11, 2020. See Davis Dec. ¶ 54, Ex. 2.

The motion is based upon this notice, the attached memorandum of points and authorities, the Declaration of Heather Davis filed concurrently herewith under separate cover and exhibits thereto, the Declaration of Louis Benowitz ISO Motion for Preliminary Approval, the Declarations of Named Plaintiffs Maria Perez, Cristal Perez Aguirre and Rocio Orozco, the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

DATED: December 11, 2020

PROTECTION LAW GROUP, LLP

By: 
Heather Davis
Amir Nayebdadash
S. Emi Minne
Attorneys for Plaintiff
ROCIO OROZCO

DATED: December 7, 2020

SMITH & BENOWITZ, LLP

By: /s/ Louis Benowitz (as authorized on 12/8/2020)
Benjamin Smith
Louis Benowitz
Attorneys for Plaintiffs
MARIA PEREZ and CRISTAL PEREZ AGUIRRE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Maria Perez, Rocio Orozco and Cristal Perez Aguirre (“Plaintiffs”) seek preliminary approval of a Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”)¹ on behalf of all non-exempt hourly employees of Defendant ODW Logistics, Inc. who performed work in California at any time between January 21, 2016 to December 30, 2020 and all non-exempt hourly employees of Defendant Staffing Leadership Group, LLC who were placed at or assigned to work at any ODW Logistics, Inc, worksite in California at any time between January 21, 2016 to December 30, 2020 (“Class Period”). *See* Declaration of Heather Davis ISO Motion for Preliminary Approval (“Davis Dec.”), Ex. 1. The Settlement terms are outlined as follows:

- Size of the Class: approximately 1,441 individuals.
- Gross Settlement Amount: \$1,999,999.99, exclusive of employer-side payroll taxes.
- Settlement Administration Costs: currently estimated at \$20,000.00.
- Requested Named Plaintiff Enhancements: \$7,500.00 each to Named Plaintiffs Maria Perez and Rocio Orozco, and \$5,000.00 to Named Plaintiff Cristal Perez Aguirre.
- PAGA Settlement Amount: \$50,0000.00, \$37,500.00 of which will be paid to LWDA with the remaining \$12,500.00 distributed to Participating Class Members.
- Requested Attorney’s Fees and Costs: \$700,000.00 plus actual litigation costs and expenses not to exceed \$25,000.00.
- Estimated Net Settlement Amount: \$1,197,499.99 to be distributed to the Settlement Class.
- Average estimated payment to each Settlement Class Member: \$831.02.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Settlement Class. Plaintiffs therefore respectfully request that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Settlement Class, approve the proposed Notice, and set a hearing date for final settlement approval, among other requested relief.

¹ All capitalized terms used herein shall have the same meaning ascribed to them in the Settlement Agreement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant ODW Logistics, Inc. (“ODW Logistics”) is a provider of warehousing, e-commerce fulfillment, and transportation services with warehouses in Ontario, California and Redlands, California. Davis Dec. ¶ 13. Defendant Staffing Leadership Group, LLC (“Staffing Leadership”) is an agency that specializes in placing temporary employees to the logistics industry, including ODW Logistics. *Id.* ODW Logistics and Staffing Leadership are collectively referred to herein as “Defendants”. Plaintiff Rocio Orozco was employed by ODW Logistics as a non-exempt, hourly paid employee during the Class Period. Plaintiffs Maria Perez and Cristal Perez Aguirre were employed by Defendants as non-exempt, hourly paid employees during the Class Period. Declaration of Maria Perez ¶ 4; Declaration of Cristal Perez Aguirre ¶ 4; Declaration of Rocio Orozco ¶ 3.

On January 21, 2020, Plaintiffs Perez and Aguirre provided notice to the LWDA and Defendants of their intent to seek civil penalties under Labor Code section 2699, et seq. (“PAGA”). On the same day, Plaintiff Perez file a wage and hour class action complaint (Case No. CIVDS2001904, “*Perez Action*”) alleging the following causes of action: (1) Unfair Competition; (2) Failures to Pay Minimum and Overtime Wages; (3) Non-Provision of Meal and Rest Periods; (4) Waiting Time Penalties; and (5) Wage Statement Penalties. On May 29, 2020, Plaintiff Perez filed a First Amended Complaint adding an additional cause of action under PAGA. Davis Dec. ¶ 15.

On January 28, 2020, Plaintiff Orozco provided notice to the LWDA and ODW Logistics of her intent to seek civil penalties under PAGA. February 11, 2020, Plaintiff Orozco filed a wage and hour class action complaint (Case No. CIVDS2004281, “*Orozco Action*”) alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wage; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Keep Accurate Payroll Records; (9) Failure to Reimburse Expenses; (10) Failure to Pay Vested Vacation Time; and (11) Violation of Business and Professions Code § 17200, et seq. On June 1, 2020, Plaintiff Orozco filed a First Amended Complaint adding PAGA cause of action. Davis Dec. ¶ 16.

1 Shortly following the filing of the *Perez* and *Orozco* actions, the Parties met and conferred
2 with respect to the potential resolution of this action and agreed to exchange informal discovery and
3 engage in a private mediation. Davis Dec. ¶ 17. Pursuant to this agreement, Defendants produced a
4 sampling of Class Members' time and pay records, as well as information and documentation
5 concerning the claims set forth in the Consolidated Class Action Complaint, such as Defendants'
6 employee handbooks and relevant wage and hour policies; information regarding the number of
7 putative class members and the number of current versus former employees; the total workweeks and
8 pay periods worked by the Class; and the average rates of pay for the Class. Davis Dec. ¶ 18.

9 After a thorough investigation and analysis of this data, on September 24, 2020, the Parties
10 attended a formal mediation with Marc Feder, Esq., a neutral and respected mediator with extensive
11 experience in complex wage and hour matters. Following a full day of settlement discussions, during
12 which the Parties debated their respective positions and exchanged views regarding the strengths and
13 weaknesses of their claims and defenses, the mediation culminated with a mediator's proposal which
14 the parties accepted the following week. Through the mediator's proposal, the Parties reached an
15 agreement to settle this matter on a class-wide basis, the material terms of which are encompassed in
16 the Settlement Agreement filed concurrently herewith. *See* Davis Dec. ¶¶ 19-20, Ex. 1.

17 On November 10, 2020, pursuant to the Parties' stipulation, the Court entered an order granting
18 Named Plaintiffs leave to file a Consolidated Class and Representative Action Complaint
19 ("Consolidated Class Action Complaint"), which consolidated the *Perez* and *Orozco* Actions and
20 added Plaintiff Aguirre as an additional named plaintiff. Per the Order, the Consolidated Class Action
21 Complaint was deemed filed and served as of the date of entry of the court's order. Davis Dec. ¶ 21.

22 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as
23 information regarding the preliminary approval hearing on this matter, were submitted to the LWDA
24 via online filing at [https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
25 [Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on December 11, 2020. Davis Dec. ¶ 54, Ex. 2.

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Settlement Class shall be defined as “all non-exempt hourly employees of Defendant ODW LOGISTICS, INC. who performed work in the State of California at any time during the Class Period and all non-exempt hourly employees of Defendant STAFFING LEADERSHIP GROUP, LLC who were placed at or assigned to work at any ODW LOGISTICS, INC, worksite in the state of California during the Class Period.” (“Settlement Class Members.”) Davis Dec. ¶ 23; Settlement Agreement ¶¶ I(X)-(Y). The Class Period and release of claims runs from January 21, 2016 to December 30, 2020. Settlement Agreement ¶ I(D). It is estimated that there are 1,441 Settlement Class Members. Davis Dec. ¶ 24.

B. Amount of Settlement

The Parties have agreed to settle the Class and PAGA claims at issue in the Consolidated Class Action Complaint for a non-reversionary Gross Settlement Amount of \$1,999,999.99, exclusive of any employer-side payroll taxes. Davis Dec. ¶ 25; Settlement Agreement ¶¶ I(J), I(W).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a Common Fund and therefore, includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Amount includes: (1) attorneys’ fees in the amount of thirty-five percent of the Gross Settlement Amount, equaling \$700,000.00; (2) actual litigation costs, not to exceed \$25,000.00; (3) Settlement Administration Costs capped at \$20,000.00; (4) Class Representative Enhancements in the total amount of \$7,500.00 each to Named Plaintiffs Maria Perez and Rocio Orozco and \$5,000.00 to Named Plaintiff Cristal Perez Aguirre; and (5) PAGA Payment to the LWDA in the amount of \$37,500.00(75% of the settlement amount allocated to PAGA claims). Davis Dec. ¶ 26; Settlement Agreement ¶¶ I(W), VIII, XIII, XIV, XV, and XVI.

After the above-estimated amounts are deducted from the Gross Settlement Amount, approximately 1,441 potential Settlement Class Members will share in a Net Settlement Amount of approximately \$1,197,499.99. Davis Dec. ¶ 27. The Net Settlement Amount will be distributed and paid to Participating Class Members on a pro-rata basis based on the number of work weeks worked during the Class Period with an average estimated Individual Settlement Payment of \$831.02. Davis

Dec. ¶ 28; Settlement Agreement ¶ XI(A). Payments to Participating Class Members shall be allocated as 20% wages and 80% penalties and interest. Davis Dec. ¶ 29; Settlement Agreement ¶ XV. Employee taxes on wages will be deducted from the wage portion of each Participating Class Member's Individual Settlement Payment. Employer-side payroll taxes shall be paid by Defendants separately from and in addition to the Gross Settlement Amount. Davis Dec. ¶ 30; Settlement Agreement ¶ XV.

The Settlement Agreement is non-reversionary and non-claims made. All money from the Net Settlement Amount will be distributed to Participating Class Members. Davis Dec. ¶ 31. Any residue Individual Settlement Payment checks remaining uncashed after 180 days will be transferred to the California State Controller's Office and held in trust for such Participating Class Members. As such, no "unpaid residue" under California Code of Civil Procedure §384 will result from the settlement. Davis Dec. ¶ 32; Settlement Agreement ¶ XI(B).

D. Release of Wage and Hour Claims

In exchange for participating in the settlement, Participating Class Members will release their wage and hour claims against Defendants; however, the release for Participating Class Members is narrowly tailored to only release claims based upon the facts alleged in the Consolidated Class Action Complaint. Davis Dec. ¶ 33; Settlement Agreement ¶ VII(A).

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001)(disapproved on other grounds). The review and approval of a proposed class action settlement involves a two-step process. See Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the range of a fair settlement to justify providing notice of the proposed settlement to class members. After notice is provided to the class, the Court must conduct a second inquiry into whether the proposed settlement is fair, reasonable and adequate. See *Id.*

The initial evaluation of the settlement at the preliminary approval step "is not a fairness

hearing.” *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, “whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006). Preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to object or exclude themselves from the settlement. *See Cal. R. Ct. 3.769(g)*. In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *See Officers for Justice v. Civil Service Commission of City and County of San Francisco*, 688 F.2d 615, 625 (1982).

V. THE SETTLEMENT IS PRESUMED FAIR

A. Arm’s-Length Bargaining

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Parties’ settlement negotiations were at all times arm’s length and adversarial. The Settlement was reached following a full day of mediation with Marc Feder, a highly respected mediator and through a mediator’s proposal. Moreover, Plaintiffs engaged in additional months of negotiations in order to finalize the long-form agreement presently before the Court. Plaintiffs were prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. Davis Dec. ¶¶ 19-20, 37-38.

B. Sufficient Investigation and Discovery by Experienced Class Counsel

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. As discussed above, the

1 parties engaged in extensive informal discovery prior to reaching a settlement. Prior to mediation,
2 Defendants produced a sampling of Class Members' time and pay records, as well as information and
3 documentation concerning the claims set forth in the Consolidated Class Action Complaint, such as
4 Defendants' employee handbooks and relevant wage and hour policies; information regarding the
5 number of putative class members and the number of current versus former employees; the total
6 workweeks and pay periods worked by the Class; and the average rates of pay for the Class. This
7 allowed Plaintiffs' counsel to conduct a informed assessment of the potential class-wide damages. The
8 Parties extensively briefed issues regarding class certification and liability, and provided their analyses
9 to the mediator who helped the Parties debate the strengths and weakness of their respective positions.
10 Davis Dec. ¶¶ 19-20, 37-38. Additionally, settlement negotiations were conducted by highly capable
11 and experienced counsel. Class Counsel are respected members of the bar with strong records of
12 vigorous and effective advocacy, and are experienced in handling complex wage and hour class action
13 litigation. Davis Dec. ¶¶ 2-12; Benowitz Dec. ¶ 2-11. Accordingly, Class Counsel had sufficient
14 information and experience to act intelligently in negotiating the Settlement.

15 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal**
16 **Positions and Recovery Risks.**

17 A settlement is not judged against what might have been recovered had a plaintiff prevailed
18 at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
19 *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court
20 must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the amount offered in
22 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
23 views of counsel, the presence of a governmental participant, and the reaction of the class members
24 to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128. The
25 reasonableness of the Settlement is underscored by the fact that Defendants have legal and factual
26 grounds for defending the action. Based upon Class Counsel's experience litigating similar complex
27 matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and
28 the merits absent a settlement. Davis Dec. ¶¶ 40-48.

1 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

2 Prior to mediation, Class Counsel analyzed an extensive sampling of time and payroll records.
3 Based on the discovery provided, Class Counsel estimated with respect to the principal claims, with
4 all claims adjudicated in favor of the Class, Defendants faced a potential liability of \$8,024,225.16.
5 This estimate is based off an estimated maximum liability based on the primary claims at issue as
6 follows: \$1,554,811.58 for rest period violations, \$1,554,811.58 for meal period violations,
7 \$357,039.27 for unpaid off-the-clock work, waiting time penalties of \$2,895,412.80, and wage
8 statement penalties of \$1,662,150.00. Davis Dec. ¶ 39.

9 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

10 Despite this potentially large liability, substantial barriers to a class recovery existed.
11 Defendants contended that Plaintiffs' claims are not suitable for class certification because individual
12 issues and affirmative defenses would predominate should this case go to trial. *See Brinker Restaurant*
13 *Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36
14 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551(2011). While Plaintiffs and Class
15 Counsel disagree with Defendants' predictions, they also recognize that there is a significant risk that
16 the Court may deny class certification. Davis Dec. ¶¶ 41-43; *see also, Findings of the Study of*
17 *California Class Action Litigation*, 2000-2006, available at
18 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
19 actions were certified either as part of a settlement *or* as part of a contested certification motion).

20 For instance, a large portion of Defendants' overall liability lies in Plaintiffs' meal period
21 claims. These claims have been increasingly difficult to certify in recent years and Defendants
22 contended their policies were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Defendants argued that
23 they had a compliant policy and practice, and Class Counsel had to consider the risk that the Court
24 would find validity in the individualized proof defense to certification of Plaintiffs' meal period claim.
25 Similarly, Plaintiffs will likely face difficulties proving the alleged rest period violations, as
26 Defendants were not required to record these breaks. As such, even if Plaintiffs established a uniform
27
28

1 policy or practice and obtained class certification, there is a substantial risk that they would have
2 difficulty proving damages with requisite certainty. Davis Dec. ¶ 42.

3 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
4 overtime claims. These claims were largely based on unrecorded, off-the-clock work performed by
5 the class members both before and after their shifts. As such, the individualized nature of the damages
6 presented substantial concerns regarding the manageability of the case and the risk the Court could
7 find these issues prevented certification. Plaintiffs' reimbursement and vacation pay claims would
8 likely present similar problems of individualized proof. Davis Dec. ¶ 43.

9 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
10 statement claims. First, these claims were derivative of Plaintiffs' previous claims and if certification
11 was denied on those underlying claims, these claims would also likely fail. Moreover, following the
12 filing of this action, the Court of Appeal held that failure to pay meal premiums does not trigger
13 derivative liability for waiting time penalties and inaccurate wage statements, thereby eliminating
14 Defendants' potential derivative liability for what Plaintiffs considered their strongest claims. *See*
15 *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal.App.5th 444 (2019). Although *Naranjo* is
16 currently pending review before the California Supreme Court, should the Court of Appeal's decision
17 be affirmed, the value of these claims will be significantly reduced. Further, even if Plaintiffs
18 prevailed on their underlying off-the-clock claims, they would still be required to demonstrate that
19 Defendants' violations of Labor Code § 203 were willful violations, a difficult prospect. *See, e.g.*,
20 *Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that "an employer's reasonable,
21 good faith belief that wages are not owed may negate a finding of willfulness.") Wage statement
22 claims have also seen varying treatment at the appellate level because such claims have an element
23 of discretion attached to them rather than a pure calculation of damages after liability is proven. *Cf.*,
24 *Jaimez v. DAIOWS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192
25 Cal.App.4th 1136 (2011). Accordingly, these derivative claims are extremely risky. Davis Dec. ¶ 44.

26
27 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving
28 the amount of wages due to each Class Member would be an expensive, time-consuming, and

1 extremely uncertain proposition. In order to prove liability and damages, Class Counsel will need to
2 request and analyze thousands of pages of documents, obtain the Class Members' contact information,
3 contact them and obtain numerous declarations at great expense. Obtaining the cooperation of current
4 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
5 current employer. On the other hand, Defendants would likely be able to obtain the cooperation of
6 their employees. Moreover, even if Plaintiffs prevail at class certification and trial, possible appeals
7 would substantially delay any recovery by the Class. Davis Dec. ¶ 45.

8
9 Class Counsel also separately contemplated the risks of proceeding with the PAGA action and
10 potential liability Defendants could face from this claim. The Parties agreed during settlement
11 negotiations to allocate \$50,000 of the Settlement towards the PAGA claims, which represents
12 approximately 2.5% of the Gross Settlement Amount. This percentage of the settlement is well-within
13 the range of wage and hour settlements regularly approved in both state and federal court for cases
14 that include both a class and PAGA action. Typically, such hybrid cases allocate only 1% of the gross
15 settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.27% of the
16 gross settlement amount have been approved as reasonable by courts. Davis Dec. ¶ 44. Class Counsel
17 also recognizes that the PAGA claims would be subject to the same defenses and risks as Plaintiffs'
18 class claims, as well as defenses unique to PAGA, that PAGA penalties may not be stacked for
19 violations based on the same conduct, and the substantial risk that PAGA penalties may be reduced
20 where they are duplicative, arbitrary or oppressive. Davis Dec. ¶ 46.

21 Therefore, taking into account the risk of not obtaining class certification, Class Counsel
22 discounted Defendants' estimated liability by 50%. The merits-based risk factors also reduced
23 Defendants' estimated liability by an additional 50%. This resulted an adjusted estimated liability of
24 \$2,006,056.29. In light of the Parties' respective legal positions and the risks of continued litigation,
25 the Gross Settlement Amount of \$1,999,999.99 is fair, adequate, and reasonable. Davis Dec. ¶ 49;
26 Benowitz Decl. ¶ 12.

1 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 Code of Civil Procedure Section 382 provides that three basic requirements must be met in
3 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-
4 defined community of interest in the question of law or fact affecting the parties to be represented; and
5 (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class
6 is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiffs contend that this action,
7 which is primarily based upon Defendants' wage and hour policies and practices, satisfies the class
8 certification requirements under California Code of Civil Procedure § 382. Defendants deny Plaintiffs'
9 allegations, but for purposes of this Settlement only, Defendants have stipulated to certification of the
10 proposed class action.

11 **A. An Ascertainable Class Exists Which Is So Numerous That Joinder Of All Members
Is Impracticable**

12 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size
13 of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d
14 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class
15 is defined as all non-exempt hourly employees of Defendant ODW Logistics, Inc. who performed
16 work in California at any time from January 21, 2016 to December 30, 2020 and all non-exempt hourly
17 employees of Defendant Staffing Leadership Group, LLC who were placed at or assigned to work at
18 any ODW Logistics, Inc, worksite in California at any time from January 21, 2016 to December 30,
19 2020. Davis Dec. ¶ 23; Settlement Agreement ¶¶ I(D), I(X)-(Y). This provides a clear and definite
20 scope for the proposed class.

21 Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity
22 requirement. Under the Federal Rules, the minimum number of a class is one-hundred individuals.
23 Under California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126
24 Cal.App.3d 926, 934 (1981)(holding forty-two class members sufficient to satisfy numerosity.) Here,
25 the estimated Class size of 1,441 plainly favors class certification.

26 Finally, the question whether class members are easily identifiable turns on whether a plaintiff
27 can establish "the existence of an ascertainable class." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695 at 706
28 (1967). The existence of an ascertainable class in this case can be established through Defendants'

1 payroll records, and the class definition is sufficiently specific to enable the parties, potential Class
2 Members and the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*,
3 191 Cal.App.3d 605, 617 (1987) (proposed class defined as all persons nationwide subscribing to
4 telephone service since January 1, 1981, who were charged for long distance calls deemed “plainly”
5 ascertainable).

6 **B. The Class Shares a Well-Defined Community of Interest**

7 The community of interest requirement embodies three factors: (1) predominant questions of
8 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
9 representatives who can adequately represent the class. *Dunk*, 48 Cal.App. 4th at 1806. Plaintiffs easily
10 satisfy all three requirements.

11 The commonality criterion requires the existence of common question of law or fact and is
12 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal. 2d 695, 706.
13 What is required is that a common question of fact or law exist which predominates over issues unique
14 to individual plaintiffs. The existence of individual issues or facts—generally present in any case
15 arising from employment—is not a bar to class certification as long as they do not render class
16 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*
17 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

18 Here, the Plaintiffs’ claims present common issues of law and fact that predominate and
19 warrant class certification. Plaintiffs allege that Defendants denied compliant meal and rest periods to
20 employees, required employees to perform work off-the-clock, and failed to fully compensate
21 employees for all time actually worked. These policies and practices meant that Defendants failed to
22 pay minimum and overtime wages, and other related claims. Plaintiffs allege that Defendants’ policies
23 and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

24 To satisfy the typicality requirement, California law does not require that Plaintiffs have claims
25 identical to the other class members. Rather, the test of typicality for a class representative is whether
26 other members have the same or similar injury, whether the action is based on conduct which is not
27 unique to the named plaintiff, and whether other class members have been injured by the same course
28 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App. 4th 1496, 1502 (2007). The typicality

1 requirement for a class representative refers to the nature of the claim or defense of the representative,
2 and not to the specific facts from which it arose or the relief sought. *See Id.*

3 Here, Plaintiffs allege that their claims are similar to that of the other Settlement Class
4 Members. All of Plaintiffs' claims arise out of the same alleged facts and course of conduct giving
5 rise to the claims of the other Settlement Class Members. Finally, Plaintiffs' claims are typical of the
6 other Settlement Class Members because they seek the exact same relief for the alleged violations.
7 Because Plaintiffs' claims are based upon the same alleged conduct and business practices as those of
8 Settlement Class Members, the typicality requirement has been satisfied.

9 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
10 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
11 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations
12 are satisfied. Counsel for Plaintiffs include well-regarded and accomplished lawyers who are qualified
13 and experienced in employment-related, class-action litigation. Davis Dec. ¶¶ 2-12; Benowitz Dec. ¶
14 2-11. Plaintiffs will vigorously, adequately and fairly represent the interests of the class. Because
15 Plaintiffs' claims are typical of other class members and are not based on unique circumstances, there
16 is no antagonism between the interests of Plaintiffs and the class.

17 **C. A Class Action is Superior to a Multiplicity of Litigation**

18 Under the circumstances, proceeding as a class action is a superior means of resolving this
19 dispute, as the class members and the court will derive substantial benefits. Class certification would
20 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
21 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
22 come forward to prove her or her separate claim and whether the class approach would actually serve
23 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
24 operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class
25 action proceedings are superior to individual litigation.

26 **VII. THE REQUESTED ENHANCEMENTS ARE REASONABLE**

27 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
28 compensation "for the expense or risk they have incurred in conferring a benefit on other members of

the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000.00 enhancement); *In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at *9 (E.D. Cal. Aug. 10, 2015) (approving service award of \$15,000 to each plaintiff); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862 at *16 (N.D. Cal. 2007) (approving payments of \$25,000 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at *18 (C.D. Cal. 2005) (awarding incentive payments between \$5,000 and \$18,000).

Plaintiffs initiated this litigation on behalf of their former co-workers who can now collect settlements. Plaintiffs invested substantial time and effort into litigation including their own research, reviewing documents, and extensive discussions with Class Counsel. Further, the requested amounts are also extremely reasonable given the large size of the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs request that enhancements of \$7,500.00 each to Named Plaintiffs Maria Perez and Rocio Orozco and \$5,000.00 to Named Plaintiff Cristal Perez Aguirre be preliminarily approved by the Court. Perez Dec. ¶¶ 5-8; Aguirre Dec. ¶¶ 5-8; Orozco Dec. ¶¶ 4-13; Davis Dec. ¶ 50.

VIII. REQUESTED ATTORNEYS’ FEE AND COSTS

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases where class members present claims against a common fund and the defendant agrees a percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

1 Here, the requested attorneys' fees of \$700,000.00, which is thirty-five percent of the common
2 fund, are disclosed to Settlement Class Members in the proposed Notice of Class Action Settlement.
3 *See* Settlement Agreement, Ex. A. The requested fee was freely negotiated, is common in the legal
4 marketplace, and is not opposed by Defendants. The Motion for Final Approval will elaborate on the
5 nature of the legal services provided and will also support Class Counsel's request for the
6 reimbursement of litigation costs not to exceed \$25,000.00. Davis Dec. ¶ 51.

7 **IX. NOTICE TO THE CLASS, THE OPT OUT AND OBJECTION PROCESS MEETS**
8 **DUE PROCESS REQUIREMENTS**

9 The Parties have jointly drafted a Notice which will be delivered to the Settlement Class
10 Members. *See* Settlement Agreement, Ex. A. The Notice will include information regarding the nature
11 of the lawsuit, a summary of the terms of the Settlement, the Class definition, information on how to
12 object and opt-out, and the date of the Final Approval Hearing. The Notice will also list each
13 Settlement Class Member's Total Workweeks and the approximate individual Net Settlement Payment
14 to be paid to the Settlement Class Member. *Id.* The Notice will indicate that the Court has determined
15 only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate
16 and reasonable, and a final determination of such issues will be made at the final hearing. *Id.* The
17 Notice shall be provided to Settlement Class Members in both English and Spanish. Settlement
18 Agreement ¶ IX(A). The Parties have also jointly drafted a Workweek Dispute Form which will be
19 delivered to the Settlement Class Members along with the Notice. *See* Settlement Agreement, Ex. B.
20 The Workweek Dispute Form will identify the number of Eligible Workweeks that she/he was
21 employed and their estimated Net Settlement Payment. *Id.* The Workweek Dispute Form will also
22 inform the employee of their right to dispute this number by completing and returning the form within
23 sixty (60) days of the postmark date of the Workweek Dispute Form. *Id.* Class Member's receipt of
24 settlement proceeds is not conditional on the submission of the Workweek Dispute Form. Absent the
25 receipt of a Workweek Dispute Form the number of workweeks identified in the Workweek Dispute
26 Form shall be determined to be accurate. Settlement Agreement ¶ IX(A).

27 No later than fourteen (14) calendar days after the Court grants preliminary approval of the
28 Settlement, Defendants will provide the Class List to the Settlement Administrator including the name,

1 last known address, last known home telephone number, number of Workweeks as a class member
2 during the class period, and social security number of all Settlement Class Members. The Settlement
3 Administrator shall perform any searches necessary for confirmation of the Settlement Class
4 Members' addresses, and shall mail the Notice and Workweek Dispute Form to all Settlement Class
5 Members within fourteen (14) business days of receiving the Class List from Defendants. Davis Dec.
6 ¶ 52; Settlement Agreement ¶ IX(A).

7 In determining whether to approve a settlement of a class action, a trial court has virtually
8 complete discretion as to the manner of giving notice to class members, and review on appeal is
9 governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186
10 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing
11 Notice to the Class which would result in a higher likelihood of actual notice. Davis Dec. ¶ 53. The
12 original source of the mailing addresses is from each Settlement Class Member, who provided the
13 information to Defendants. As a fail-safe, additional searches will be performed on any notice returned
14 as non-deliverable. Settlement Agreement ¶ IX(A). The Settlement Administrator will report any and
15 all opt outs, objections and disputes. Settlement Agreement ¶ IX(A).

16 Any Settlement Class Member wishing to object to the approval of this Settlement shall
17 provide a signed and dated written statement stating the specific reason for the objection as well as
18 their full name, last four (4) digits of their social security number and/or employee ID number, and
19 dates they worked for Defendants. Objections must be mailed to the Settlement Administrator within
20 sixty (60) calendar days following the initial mailing of the Notice. Settlement Agreement ¶ IX(B).

21 Any Settlement Class Member who wishes to be excluded from the Settlement must mail the
22 Settlement Administrator a signed and dated written request for exclusion including their full name,
23 dates of employment, and last four (4) digits of their social security number and/or employee ID
24 number. The request for exclusion must be postmarked no later than sixty (60) calendar days after
25 mailing of the Class Notice. Settlement Agreement ¶ IX(C).

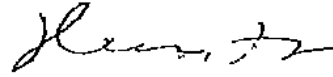
26 **X. CONCLUSION**

27 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs'
28 Motion for Preliminary Approval and the relief requested herein.

1 DATED: December 11, 2020

Respectfully Submitted,

2 **PROTECTION LAW GROUP, LLP**

3 

4 By: _____

5 Heather Davis
6 Amir Nayebdadash
7 S. Emi Minne
8 Attorneys for Plaintiff
9 ROCIO OROZCO

10 DATED: December 11, 2020

SMITH & BENOWITZ, LLP

11 By: /s/ Benjamin Smith (as authorized on 12/8/2020)
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