

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Mitchell J. Murray (SBN 285691)

JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiffs Lan Le and Mario Estrada-Peralta,
on behalf of themselves and all others similarly situated

Douglas Han (SBN 232858)
Shunt Tatavos-Gharajeh (SBN 272164)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs Oscar Benitez and Shaquille Howard,
on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

OSCAR BENITEZ, LAN LE,
SHAQUILLE HOWARD, and MARIO
JORGE ESTRADA-PERALTA, as
individuals and on behalf of all others
similarly situated,

Plaintiffs,

v.

MEDTRONIC, INC., a Minnesota
corporation; MEDTRONIC USA INC., a
Minnesota corporation; COVIDIEN,
L.P., a Delaware Limited Partnership;
and DOES 1-50, inclusive,

Defendants.

Case No. 30-2019-01069185-CU-OE-CXC

Consolidated with the following cases:

Benitez – 30-2019-01106385

Le – 30-2020-01140338

Le – 30-2020-01144725

Howard – 30-2020-01159995

Added Plaintiff: Mario Jorge Estrada-Peralta

Assigned for All Purposes to Hon. Peter
Wilson

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: December 16, 2021

Time: 1:30 p.m.

Dept: CX-102

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1 **I. INTRODUCTION**

2 Plaintiffs Oscar Benitez, Lan Le, Shaquille Howard, and Mario Estrada-Peralta
3 (“Plaintiffs”), on behalf of themselves and all others similarly situated, hereby apply for
4 preliminary approval of the proposed class and Private Attorneys General Act (“PAGA”) action
5 settlement, upon the terms and conditions set forth in the Joint Stipulation of Class Action and
6 PAGA Settlement and Release (“Settlement Agreement”), attached to the Declaration of James
7 Hawkins as Exhibit 1.

8 **II. PROCEDURAL BACKGROUND**

9 On or about May 10, 2019, Plaintiff Oscar Benitez (“Benitez”) filed a complaint in Orange
10 County Superior Court asserting PAGA claims. Thereafter, on or about October 21, 2019, Benitez
11 filed a separate class action complaint alleging the following causes of action against Defendants,
12 including: (1) failure to pay wages, including regular, overtime and double time wages; (2) meal
13 period violations; (3) rest break violations; (4) violations of Labor Code section 1194 and 1197;
14 (5) failure to timely pay final wages; (6) failure to provide accurate wage statements; (7) failure to
15 reimburse business expenses; and (8) violation of the California Business and Professions Code
16 (“UCL”).

17 On May 26, 2020, Plaintiff Lan Le (“Le”) filed a class action complaint against Defendants
18 alleging all of the following claims: (1) failure to provide meal periods; (2) failure to provide rest
19 breaks; (3) failure to timely pay final wages; (4) failure to furnish accurate wage statements; and
20 (5) violation of Unfair Competition Law. Le later filed a motion for leave to file an amended
21 complaint to add the claims of Plaintiff Mario Estrada-Peralta (“Estrada-Peralta”).

22 On June 24, 2020, Le filed a separate PAGA action against Defendants on behalf of himself
23 and other aggrieved employees, seeking civil penalties under PAGA.

24 On July 30, 2020, Le filed a motion to consolidate in *Benitez v. Medtronic, et al.*, Case No.
25 30-2019-01106385.

26 On September 11, 2020, Plaintiff Shaquille Howard (“Howard”) filed a class action
27 complaint against Defendants asserting the same or similar claims, and putative class members as
28 Benitez.

1 Defendants filed a motion to consolidate the related actions of *Benitez v. Medtronic Inc.*,
2 *et al.*, Case No. 30-2020-01140338, *Le v. Medtronic, Inc., et al.*, Case No. 30-2020-01140338 and
3 *Le v. Medtronic, Inc., et al.*, Case No. 30-2020-01144725.

4 On January 4, 2021, the Parties filed the operative First Amended Consolidated Complaint
5 in this action.

6 Defendants filed an Answer to the First Amended Consolidated Complaint and denied all
7 allegations and claims asserted therein. Defendants deny that they engaged in any misconduct in
8 connection with its wage-and-hour practices and that they have any liability or engaged in
9 wrongdoing of any kind associated with the claims alleged in the Action, including any Settled
10 PAGA Claims. Defendants further contend that they complied at all times with both federal and
11 state wage-and-hour laws, and all other laws regulating the employer-employee relationship that
12 relate to the employment of Plaintiffs and the Class and PAGA Members.

13 Prior to mediation, Class Counsel engaged in extensive formal and informal discovery
14 including multiple PMQ depositions, multiple sets of written discovery and producing Plaintiffs
15 for depositions, investigation, and discussions about the strengths and weaknesses of the claims
16 and defenses of both Actions, including a sampling of over twenty percent of time and payroll
17 records for non-exempt employees of Defendants; hire dates, dates of separation of employment,
18 and rate of pay for all putative class members from 2015 through mediation; a thorough review of
19 Defendants' written wage-and-hour policies provided to putative class members, including
20 without limitation, employee handbooks; purported written meal period waivers in place; among
21 other things. Class Counsel also researched the law and investigated the correlative facts regarding
22 Plaintiffs' alleged claims and potential defenses thereto, as well as the potential damages and
23 penalties claimed by Plaintiffs. (Declaration of James R. Hawkins ("Hawkins Decl.") ¶ 8).

24 Defendants and Class Counsel, on behalf of Plaintiffs and the putative class and aggrieved
25 employees, attended mediation with Lisa Klerman on July 13, 2021. During mediation, Defendants
26 denied, and continue to deny, each of the allegations asserted in the actions, have repeatedly
27 asserted and continue to assert defenses to Plaintiffs' claims and contentions, and expressly denied
28 and continue to deny that they engaged in any wrongdoing or have any liability arising out of any

1 of the facts or conduct alleged in the actions. Nevertheless, the Parties concluded, after considering
2 the sharply disputed factual and legal issues involved in this litigation, the risks associated with
3 further prosecution, the substantial benefits to be received pursuant to a compromise and
4 settlement of the litigation and agreed upon the principal terms of a global settlement of all
5 pending actions pursuant to the Mediator's proposal. Thereafter, the Parties engaged in
6 extensive, arms-length negotiations and reached an agreement on the full terms of a settlement of
7 all the actions in accordance with the Settlement Agreement that is now presented to this Court.
8 (Id. ¶¶ 9, 10).

9 The terms and conditions of the Settlement Agreement are the result of lengthy, intensive
10 arms-length negotiations between the Parties supervised by an experienced employment law
11 mediator. The Settlement Agreement is entered into in good faith as to each Class Member and
12 that the Settlement is fair, reasonable and adequate.

13 **III. THE SETTLEMENT**

14 Subject to Court approval pursuant to Code of Civil Procedure section 382 and California
15 Rules of Court, rule 3.679, *et seq.*, Plaintiffs and Defendants have agreed to settle the litigation
16 by agreement upon the terms and conditions and for the consideration set forth in the Settlement
17 Agreement. A summary of the terms of the settlement are as follows:

- 18 • Defendants will stipulate, for the purpose of this settlement only, to certification
19 of a class defined as: all current and former non-exempt employees of Defendants,
20 either direct or workers placed through a staffing agency, who worked for
21 Defendants in the State of California from October 21, 2015 through September
22 15, 2021, other than those who opt-out. (Ex. 1, ¶ 4).
- 23 • Defendants shall pay \$7,000,000.00 which is referred to herein as the "Gross
24 Settlement Amount" or "GSA". (Ex. 1, ¶ 16).
- 25 • The "Net Settlement Amount" or "NSA" is the amount remaining after deducting
26 the amounts awarded to Class Counsel for attorneys' fees and costs, the
27 enhancement award to Plaintiffs, the payment to the LWDA, and the Settlement
28 Administrator's costs. The Net Settlement Amount is estimated to be
approximately \$4,206,667.00. (Ex. 1, ¶ 19).
- The Settlement Administration costs, not to exceed \$45,000.00, will be paid out
of the Gross Settlement Amount. (Ex. 1, ¶ 56(c); Declaration of Jodey Lawrence
on Behalf of Phoenix Settlement Administrators ("Lawrence Decl."), Ex. B).

- Class Counsel will apply for, and Defendants will not oppose, attorneys' fees of \$2,333,333, which represents one-third of the Gross Settlement Amount, and actual costs incurred up to \$55,000, all of which will be paid out of the Gross Settlement Amount. (Ex. 1, ¶ 51(a)).
- Class Counsel will apply for, and Defendants will not oppose, an enhancement award of \$10,000.00 for each Plaintiff (\$40,000 total), which will be paid out of the Gross Settlement Amount. (Ex. 1, ¶ 51(b)).
- The parties agreed that \$500,000.00 of the Gross Settlement Amount will be paid as PAGA penalties, 75% (\$375,000.00) of which will be paid to the LWDA, and 25% (\$125,000.00) of which will be distributed to the PAGA Members; (Ex. 1, ¶ 51(e)).
- The Settlement Payments to Participating Class Members will be allocated 20% to taxable wages and 80% to non-taxable penalties and interest. (Ex. 1, ¶ 58).
- Defendants will pay the employer's share of any payroll taxes separate and apart from the Gross Settlement Amount. (Ex. 1, ¶ 56).
- Participating Class Members will have 120 days from the date of issuance of the check to cash their check. For any check not cashed, the Settlement Administrator will pay over the amount represented by the check to the State Controller, with the identity of the Participating Class Member to whom the funds belong, to be held for the Participating Class Member per California Unclaimed Property Law.¹ (Ex. 1, ¶¶ 67, 68).

The release is fairly tailored to the claims that were asserted or could have been asserted in the lawsuit based on the facts alleged in the First Amended Consolidated Class Action and Representative Action Complaint filed on January 4, 2021. (Hawkins Decl. ¶ 13). The Settlement Agreement and Notice of Proposed Class Action Settlement ("Class Notice") contain a comprehensive description of the "Settled Claims" and "Settled PAGA Claims" and generally provides an adequate level of protection against future claims. (Ex. 1 ¶¶ 34-35, Ex. A). In addition, only Plaintiffs are required to provide a Civil Code § 1542 waiver, not the Class Members. (Ex. 1 ¶ 55).

IV. THE TWO-STEP APPROVAL PROCESS

¹ If the uncashed funds are not able to be distributed to the State Controller Unclaimed Property Fund and if a *cy pres* fund is required, subject to Court instruction, any amounts remaining from uncashed checks shall be paid to Legal Aid at Work.

1 Any settlement of class litigation must be reviewed and approved by the Court. This is
2 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after
3 notice has been distributed to the class members for their comment or objections. The Manual
4 for Complex Litigation Second states at section 30.44:

5 A two-step process is followed when considering class settlements ... if the
6 proposed settlement appears to be the product of serious, informed, non-
7 collusive negotiations, has no obvious deficiencies, does not improperly
8 grant preferential treatment to class representative or segments of the class,
9 and falls within the range of possible approval, then the court should direct
10 that notice be given to the class members of a formal fairness hearing, at
11 which evidence may be presented in support of and in opposition to the
12 settlement.

13 (*Id.* at § 10 (1985).)

14 Thus, the preliminary approval of the trial court is simply a conditional finding that the
15 settlement appears to be within the range of the acceptable settlements. As class action Professor
16 Herbert B. Newberg comments, “[t]he strength of the findings made by a judge at a preliminary
17 hearing or conference concerning a tentative settlement proposal may vary. The court may find
18 that the settlement proposal contains some merit, is within the range of reasonableness required
19 for a settlement offer or is presumptively valid subject only to any objections that may be raised
20 at a final hearing.” (4 Conte & Newberg, Newberg on Class Actions [“Newberg on Class
21 Actions”], § 11.26 (4th Ed. 2002).)

22 The procedures for submission of a proposed settlement for preliminary approval is
23 discussed at section 11.24 through 11.26 of Newberg on Class Actions. Newberg observes at
24 section 11.24:

25 When the parties to an action reach a monetary settlement, they will usually
26 prepare and execute a joint stipulation of settlement, which is submitted to the
27 court for preliminary approval. The stipulation should set forth the central terms
28 of the agreement, including but not limited to, the amount of the settlement, form
of payment, manner of determining the effective date of settlement, and any
recapture clause.

29 **V. THE PRESUMPTION OF FAIRNESS**

30 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
evidence to the contrary is offered. In short, there is a presumption that the negotiations were

1 conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen “Clean Diesel”*
2 *Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-
3 cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576,
4 580.) Courts do not substitute their judgment for that of the proponents, particularly where, as
5 here, settlement has been reached with the participation of experienced counsel familiar with the
6 litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093, citing Newberg on Class
7 Actions, § 11.44, p. 457 and *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471; *In re Ikon*
8 *Office Solutions, Inc. Securities Litigation* (E.D. Pa. 2002) 209 F.R.D. 94, 104, citing *Sommers*
9 *v. Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571, 576.)

10 While the recommendations of counsel proposing the settlement are not conclusive, the
11 Court can properly take them into account, particularly where, as here, they have been involved
12 in litigation for some period of time, appear to be competent, have experience with this type of
13 litigation, and have obtained substantial data from the opposing party. (See Newberg on Class
14 Actions, § 11.47.)

15 Here, the Settlement was reached after extensive discovery and investigation including
16 the depositions of each the four Plaintiffs and nine depositions of Defendants’ persons most
17 knowledgeable, written discovery, motions to intervene and consolidate, discovery motions,
18 interviews with Class Members, an exchange of time and payroll records for putative class
19 members, preparation of damages analyses, mediation with an experienced complex labor and
20 employment mediator, and extensive discussions and negotiation between counsel. The
21 Settlement that has been reached, subject to this Court’s approval, is the product of tremendous
22 effort and a great deal of expense by the Parties and their counsel. The settlement amount is, of
23 course, a compromise figure. However, counsel for the Parties are satisfied that this figure is
24 reasonable in light of the risks and expense of continued litigation, including without limitation,
25 and Defendants’ argument that Plaintiffs cannot demonstrate that Medtronic and Covidien
26 jointly employed the Class Members supplied by staffing agencies. (Hawkins Decl. ¶ 11).

27 **VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**
28

1 A notice of settlement of a class action “must contain an explanation of the proposed
2 settlement and procedures for class members to follow in filing written objections to it and in
3 arranging to appear at the settlement hearing and state any objections to the proposed settlement.”
4 (Cal. Rules of Court, rule 3.769, subd. (f).) Attached to the Declaration of James Hawkins as
5 Exhibit 1 thereto is the Settlement Agreement between the Parties. Attached to the Settlement
6 Agreement as Exhibit A thereto is the proposed Class Notice to be distributed to the class members
7 in English, Vietnamese, and Spanish. The proposed Class Notice satisfies these requirements. In
8 addition, attached to the Settlement Agreement as Exhibit B is the proposed Opt-Out Form to be
9 distributed to class members with the Class Notice.

10 The Parties respectfully request that this Court approve the above-referenced Class
11 Notice and dissemination of the Class Notice to the Class Members, consistent with the manner
12 and timing as set forth in the Settlement Agreement. The Parties have agreed to use Phoenix
13 Settlement Administrators (“Phoenix”)—an experienced Settlement Administrator—to
14 administer the settlement. (See Lawrence Decl.). The Parties have further agreed that the
15 administration costs will be paid out of the Gross Settlement Amount. It is requested that the
16 Court appoint Phoenix to serve as the Settlement Administrator.

17 **VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
18 **OBJECTIVE EVIDENCE**

19 **A. The Settlement Was Negotiated at Arms-Length and Is Not Collusive**

20 The Settlement that has been reached, subject to this Court’s approval, is the product of
21 substantial effort by the Parties and their counsel. The settlement was reached after extensive
22 factual and legal investigation and research, more than a dozen depositions of the Parties,
23 interviews with Class Members, substantial written discovery, exchanges of documents and
24 information, review of Defendants’ employment policies, correspondence and negotiation
25 between counsel, an analysis of Defendants’ time and payroll records putative class members,
26 a full-day mediation, followed by extensive negotiation after mediation to finalize the terms and
27 conditions of the general settlement parameters, evidence and rulings in similar actions litigated
28 elsewhere in the state, and a review of similar cases in the same industry elsewhere in the

1 country. The settlement amount is, of course, a compromise figure. It considered the risks
2 related to liability, damages, and all the defenses asserted by Defendants. (Hawkins Decl. ¶ 23;
3 Han Decl. ¶¶7-20).

4 Plaintiffs assert that the wage and hour claims and the claims for resulting penalties would
5 be certified. For example, Plaintiffs allege that they were not compensated for time spent during
6 compulsory shuttle travel time, security checkpoints, and donning and doffing their gowns, that
7 Defendants also failed to include non-discretionary bonuses and other incentives in the regular rate
8 of pay for purposes of overtime in violation of *Alvarado v. Dart Container Corporation of*
9 *California* (2018) 4 Cal. 5th 542, 573, and that Defendants failed to provide lawful meal and rest
10 breaks as a result of the time spent donning and doffing their gowns and requiring that employees
11 remain on premises during breaks. On the other hand, Defendants argued that Plaintiffs could not
12 meet the requirements of class certification or establish that the PAGA claims are manageable, as
13 they claim that they maintained facially compliant meal and rest break policies; that employees
14 were trained and reminded of the need to take them, that they were not obligated to police meal
15 breaks and ensure no work thereafter was performed (*Brinker Restaurant Corp. v. Superior Court*
16 (2012) 53 Cal.4th 1004, 1040); that they paid for all time donning and doffing and that such time
17 did not count against the time when employees took meal and rest breaks; that there was no
18 compulsory use of any shuttle and in fact none of the named Plaintiffs testified to that, that there
19 were no security checks, that any wage discrepancies are not the product of an overarching policy
20 that was uniformly applied; that Defendants did not fail to include bonus pay in the calculation of
21 overtime; that any bonus pay that as not included was discretionary; and that putative class
22 members were provided all tools and equipment necessary to perform their job duties for
23 Defendants and therefore there were no expenses to be reimbursed. Defendants further contend
24 that class certification would not be warranted because individual liability issues predominate any
25 class allegations. (Hawkins Decl. ¶ 24).

26 While Plaintiffs believe in their chances of success of certifying the claims if permitted,
27 Plaintiffs recognized the potential risk, expense, and complexity posed by litigation on a class basis.
28 Continuing to litigate Plaintiffs' claims that involve numerous Class Members during the Class

1 Period working with Defendants would require substantial preparation and discovery and
2 ultimately would involve the deposition and presentation of numerous more Class Member and
3 expert witnesses, as well as the consideration, preparation, and analysis of expert reports.
4 Therefore, further class litigation, if permitted, would have carried with it significant additional
5 expense incurred by each side (above and beyond the tens of thousands of dollars of expenses
6 already incurred). (Id. ¶ 25).

7 Again, Plaintiffs and Defendants have very strong positions on liability in this case.
8 Defendants deny wrongdoing of any kind associated with the claims alleged in the action, and
9 further deny that, for any purpose other than that of settling this lawsuit, the matters are
10 appropriate for class treatment. In light of the sharply contested legal and factual issues, the
11 risks of continued litigation, and substantial benefits to Class Members under the Settlement,
12 the terms and conditions of this class settlement are fair and reasonable to all sides. (Id. ¶ 26).

13 **B. The Settlement Amount is Well Within the Range of Reasonableness**

14 The settlement amount reached in this case provides significant recovery to participating
15 class members, based on the circumstances, falls within the range of reasonableness.

16 **1. Recovery of Damages for Unpaid Overtime**

17 Plaintiffs argued that Defendants' failure to include incentive pay and/or bonuses in the
18 regular rate of pay for the purpose of calculating the overtime rate of pay resulted in the failure
19 to pay overtime wages.

20 From the records provided, and based on Defendants' representation, Plaintiffs understood
21 the average rate of pay for non-exempt employees throughout the Class Period to be approximately
22 \$20.13 per hour. Defendants further provided Plaintiffs with information for 106,739 workweeks
23 for 846 putative class members in the Class Period, which was extrapolated to 526,876 workweeks
24 for 6,855 putative class members through September 2021. When the overtime rate was
25 recalculated to include 1.5x the *regular rate* that included the bonus payments in the regular rate
26 pursuant to the method endorsed by the California Supreme Court in *Alvarado v. Dart Container*
27 *Corp. of California* (2018) 4 Cal.5th 542, it was found that there was a \$123,319 underpayment of
28 overtime wages. When extrapolated to the Class Members directly hired by Defendants who

1 received bonuses, Plaintiffs calculated the underpayment due to the failure to include
2 nondiscretionary bonuses into the regular rate of pay amounted to \$408,982. (Id. ¶ 29).

3 However, Defendants argued that to the extent overtime was not paid on a bonus it was
4 because it was discretionary. Defendants point to their Medtronic Incentive Plan to further explain
5 that the bonus was paid as a percentage of eligible compensation, meaning that overtime was paid
6 to the extent it was owed. In sum, based on these facts, Defendants contend that no monies are
7 owed for any alleged failure to include incentive pay and/or bonuses in the regular rate of pay for
8 the purpose of calculating the overtime rate of pay. As such, Plaintiffs are informed and believe it
9 reasonable, when taking into account Defendants' defenses, and other attendant risks, to calculate
10 the relief that could reasonably be expected to be rewarded at trial to be \$204,491 (\$408,982 x .5).
11 (Id. ¶ 30).

12 **2. Recovery of Damages for Unpaid Wages**

13 Plaintiffs' theory that Defendants failed to pay all wages owed to Class Members was based
14 on the security practices employed by Defendants that required Class Members who worked "first
15 shift" to park their vehicles in an employee parking lot and walk to the designated pick up area
16 and wait for the shuttle to arrive and transport them to the facility.. In addition, Class Members
17 were forced to shorten their meal breaks to ensure that they would have adequate time to clock in
18 from their meal breaks. (Id. ¶ 31).

19 Plaintiffs contend that Defendants failed to pay Class Members for all minutes worked.
20 Specifically, due to the requirement that Class Members were compelled to travel on Defendants'
21 shuttles, were required to wait in line each shift to clock in, and compelled to return from their
22 meal breaks early to ensure they were back to their workstations in time. Plaintiffs and other Class
23 Members had to work off-the-clock to maintain their employment. Plaintiffs allege that Class
24 Members as well as themselves were compelled to work off the clock in order to comply with
25 Defendants' attendance and punctuality policy. Plaintiffs hold that this practice resulted in Class
26 Members not being compensated for all the hours they were subject to Defendants' control, or
27 suffered or permitted to work by Defendants. (Id. ¶ 32).

1 Plaintiffs' narrative testimony lends itself to a reasonable estimate of 5 minutes of unpaid
2 work per shift in connection with this off-the-clock work. The time and pay records analyzed by
3 Plaintiffs lead to the reasonable belief that there were approximately 2,007,960 shifts worked by
4 Class Members at the average hourly rate of \$20.13 during the Class Period. Thus, a reasonable
5 calculation of Defendants' exposure for failing to pay for all hours worked is \$3,354,879
6 (2,007,960 shifts x .083 hours x \$20.13/hr.) with an equal amount in liquidated damages. (Id. ¶
7 33).

8 Defendants argue that time was accurately tracked, that they paid for all time worked,
9 and employ a policy forbidding off-the-clock work. Defendants further maintain that each of
10 the named Plaintiffs admitted that there were no security checks and did not testify to any
11 compulsory travel. Rather, at one time at one location, a courtesy shuttle was provided that
12 employees could voluntarily use. Moreover, Defendants assert that Plaintiff cannot certify a
13 class for unpaid wages and that any trial for such a claim would be unmanageable as they require
14 individualized inquiries into who violated the off-the-clock policy, which is complicated by the
15 fact that Defendants employed various Class Members in numerous locations who worked
16 different shifts performing different functions. Defendants also contend that employees were
17 not subject to employer control until after clocking in, and that to the extent employees chose to
18 park in certain lots or take shuttles, this was a matter of personal choice and did not constitute
19 compensable time. Thus, Defendants contend that no monies are owed on this account but adds
20 that even if that were the case, estimation of five minutes of unpaid time for every shift worked
21 for every employee is excessive. As such, Plaintiffs are informed and believe it reasonable,
22 when taking into account Defendants' defenses, and other attendant risks, to calculate the relief
23 that could reasonably be expected to be rewarded at trial to be \$1,677,439 (\$3,354,879 x .5). (Id.
24 ¶ 34).

25 **3. Recovery of Damages for Non-Compliant Meal Periods**

26 While Defendants maintained apparently facially compliant meal period policies,
27 Plaintiffs testified that they and other Class Members often did not receive compliant meal
28 periods because they were required to wait in line to gown/de-gown, don and doff other PPE,

1 wash their hands, and walk through the controlled access doors. Defendants did not account for
2 this time when scheduling meal periods and demanding strict compliance with their policies
3 regarding time away from workstations. Moreover, Plaintiffs testified that Defendants held
4 meetings during meal periods. Recognizing the difficulty in certifying a class action for
5 employees who had their meal periods shortened due to donning and doffing or interrupted,
6 Plaintiffs calculated damages only for those documented as missed, late, or not taken after the
7 sixth or tenth hour. In that regard, Plaintiffs extrapolated that there were an estimated 234,719
8 short meal periods, 369,785 late meal periods, 23,757 shifts between five and six hours with no
9 meal taken, 48,283 shifts above six hours with no meal taken, 90,004 shifts above ten hours with
10 no meal taken, and 5,649 shifts above hours with no meal taken, for a total of 605,324 unique
11 (one per shift) meal violations with only an estimated 34,355 meal period premium payments
12 made. Thus, Plaintiffs calculated net unpaid meal periods to total \$10,512,363 ((605,324 unique
13 violations x \$20.13 /hr.) - \$1,672,809 meal premium payments)). (Id. ¶ 35).

14 In response, Defendants argued that they had and have a compliant meal period policy,
15 thus necessitating an individual inquiry into why any meal periods were taken late, were short,
16 or, in very few instances, were not provided. Moreover, Defendants defend that in the rare
17 occasion that a meal period was not compliant, Defendants provided meal period premium pay,
18 in accordance with their policy. Indeed, Defendants paid an estimated 44,606 meal premium
19 payments, totaling approximately \$1,672,809. Defendants argued that they properly calculated
20 premium pay according to an employee's base hourly rate under section 226.7(c) based on the
21 Court of Appeal's decision in *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th
22 1239². Defendants further point out that the vast majority of Class Members signed written meal
23 period waivers, and therefore the violations that Plaintiffs contend to exist for shifts between
24

25 ² At the time of mediation, the California Supreme Court was considering whether the
26 Legislature intended "regular rate of compensation" under section 226.7(c) to have the same
27 meaning as "regular rate of pay" under section 510(a), such that the calculation of premium
28 pay for noncompliant meal or rest periods, like the calculation of overtime pay, must account
for not only hourly wages but also other nondiscretionary payments. *Performed. Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

1 five and six hours or ten and twelve hours are meal periods that Class Members may legally
2 waive. As such, Plaintiffs are informed and believe it reasonable, when taking into account
3 Defendants' defenses, and other attendant risks, to calculate the relief that could reasonably be
4 expected to be rewarded at trial to be \$2,089,125 (186,882 shifts with no meal taken x \$20.13) -
5 \$1,672,809 meal premium payments). (Id. ¶ 36).

6 **4. Recovery of Damages for Non-Complaint Rest Periods**

7 Plaintiffs assert that they and other Class Members did not always receive compliant rest
8 breaks because they were not permitted to leave the production line without first being relieved
9 of all duty, the production schedules did not provide for rest periods, and, like meal periods,
10 Class Members were required to wait in line to gown/de-gown, don and doff other PPE, wash
11 their hands, and walk through the controlled access doors which caused them to take less than a
12 net 10-minute rest period. Defendants did not account for this time when scheduling rest periods.
13 Plaintiffs asserted that as to all non-exempt employees (including those that were not involved
14 in production operations), Defendants enforced scheduling and staffing practices that effectively
15 failed to authorize and permit all rest periods. The sampling provided by Defendants reveal that
16 there were 522,573 shifts above 3.5 hours in length, which Plaintiff extrapolates to be 1,986,712
17 in the Class Period. Assuming a 100% violation rate, Plaintiffs calculate Defendants' maximum
18 exposure for rest break recovery amounts to \$39,992,512. (1,986,712 shifts x \$20.13/hr.) (Id. ¶
19 37).

20 Defendants defend that they have compliant rest period policies, that putative class
21 members always took their rest breaks, were trained and reminded to take them, and that
22 individual issues predominate as to why rest periods were not taken (if not taken). Moreover,
23 Defendants maintain that at all relevant times Defendants had posted the applicable Wage Order
24 and putative class members were trained on Defendants' rest break policies, including, among
25 other things, the requirement for employees to notify Defendants of any policy violations.
26 Defendants further defended that, as a matter of policy, Defendants authorized and permitted 15
27 minutes for rest periods to provide for the time spent donning and doffing and that Defendants
28 actually scheduled rest periods for employees. In sum, Defendants hold that the inquiry is not

1 properly amenable to class certification, cannot give rise to a manageable trial, and, anyway, an
2 estimate of a 100% violation rate is excessive. (Id. ¶ 38).

3 Plaintiffs recognize Defendants' arguments that Class Members were authorized and
4 permitted to take rest periods and that the debatably facially compliant policy and practices may
5 present hurdles when moving to certify a class and demonstrating manageability. Thus, Plaintiffs
6 believe that a twenty-five percent violation rate for this claim is reasonable. As such, Plaintiffs
7 are informed and believe it reasonable, when taking into account Defendants' defenses, the
8 hurdles of certification, and other attendant risks, to calculate the relief that could reasonably be
9 expected to be rewarded at trial to be \$9,998,128 (\$39,992,512 x .25). (Id. ¶ 39).

10 **5. Recovery of Business-Related Expenses**

11 Plaintiffs contend that they were required to incur expenses in the furtherance of their
12 work duties for Defendants including cell phone usage. Plaintiffs argued that they and other
13 Class Members should have been reimbursed for these expenses but were not trained how to
14 request reimbursement training and were not reimbursed in violation of Labor Code section
15 2802. (Id. ¶ 40).

16 Defendants defend that they have a policy and procedure for requesting reimbursement
17 and that they reimbursed all necessary expenses. They also state that there is no evidence that
18 Plaintiffs incurred any expenses for cell phones, that they did not need their cell phone to perform
19 their manufacturing work and failed to submit any requests for reimbursement or that their
20 supervisors were aware of them incurring any kind of expense. (Id. ¶ 41).

21 In light of the hurdles of certification, difficulty of demonstrating common proof, and
22 other potential hurdles to presenting a manageable trial, Plaintiffs did not attribute any
23 meaningful amount of damages to this claim at mediation. (Id. ¶ 42).

24 **6. Wage Statement Violations**

25 Plaintiffs contend that Class Members are entitled to recover penalties for Defendants'
26 alleged failure to issue compliant wage statements under Labor Code section 226, subdivision
27 (e) for the derivative impact of the failure to pay all wages owed in connection with alleged
28 unpaid wages, failure to pay meal period premiums, and failure to pay rest period premiums. In

1 addition, Plaintiffs assert that Defendants used incorrect rates for premiums paid, omitted total
2 hours worked, time off balances, and incorrectly identified Medtronic as the Class Members’
3 employer. A non-exempt employee suffering injury as a result of a knowing and intentional
4 failure by an employer to comply with Labor Code section 226, subdivision (a) is entitled to
5 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
6 a violation occurs and one hundred dollars (\$100) per employee for each violation in a
7 subsequent pay period, with a maximum aggregate penalty of four thousand dollars (\$4,000).
8 This claim commands a one-year statute of limitations period, which would significantly limit
9 this claim. (Id. ¶ 43).

10 Per information provided by Defendants, Plaintiffs believe there were 1,943 Class
11 Members who worked 108,224 pay periods during the relevant time period. Thus, if a calculation
12 is performed using the maximum exposure permitted per Class Member under Labor Code
13 section 226, this amounts to a maximum exposure for Defendants of \$10,608,000 (108,224 pay
14 periods x \$50 for each initial pay period and \$100 for each subsequent pay period). (Id. ¶ 44).

15 Furthermore, Defendants contend that the wage statements issued to their employees
16 fully complied with Labor Code section 226, and that they are not responsible for the wage
17 statements issued to contingent workers. Defendants state that because they believe no wages
18 are unpaid that, thus, there can be no derivative penalties. They further defend that even if there
19 were derivative penalties, that there were minimal instances during the statutory period where
20 an employee earned a bonus and worked overtime in the same pay period, thus, there is nominal
21 hypothetical liability. Defendants further contend that because Plaintiffs’ underlying claim for
22 additional wages fail, Plaintiffs suffered no injury and cannot recover for inaccurate wage
23 statements, citing *Serrano v. Aerotek, Inc.* (2018) 21 Cal. App. 5th 773 [*Serrano*]. In that case,
24 the Court noted that “the derivative claims ‘rise or fall based on the [Labor Code] claim.’” (Id.
25 At 785.) They further cite *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th
26 444 [*Naranjo*] for the proposition that no derivative wage statement violation exists for failure
27 to pay for meal and rest period premiums. Plaintiffs note that the ruling in *Naranjo* is pending
28 review by the California Supreme Court. Defendants further cite *Magadia v. Wal-Mart Assocs.*

1 (9th Cir. 2021) 999 F.3d 668, 681 for the proposition that Labor Code section 226 does not
2 require the employer to list the hourly rates of the overtime adjustments on the employee's wage
3 statements. (Id. ¶ 45).

4 However, Plaintiffs understand the risks inherent in this claim should the underlying
5 claims not be certified or not succeed on the merits and the potential that a Court finds no injury
6 occurred. Thus, Plaintiffs believe that a violation rate of ten percent for this claim is reasonable.
7 As such, Plaintiffs are informed and believe it reasonable, when taking into account Defendants'
8 defenses, and other attendant risks, to calculate the relief that could reasonably be expected to
9 be rewarded at trial to be \$985,050 ((10,822 pay periods x \$50 for each initial pay period and
10 \$100 for each subsequent pay period) x .1.)) (Id. ¶ 46).

11 **7. Waiting Time Penalties**

12 Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant
13 statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days'
14 worth of wages as a waiting time penalty for not being paid all wages upon the separation of
15 employment. Plaintiffs allege that penalties are owed under Labor Code section 203 due to, at
16 a minimum, Defendants' failure to pay wages for all hours worked and failure to pay premium
17 wages. (Id. ¶ 47).

18 Plaintiffs understand from information provided by Defendants that there were
19 approximately 985 separated employees during the statutory period. A 100% violation rate for
20 the approximately 985 former employees, using the average rate of pay of \$20.13, amounts to a
21 maximum exposure of \$4,758,732 for waiting time penalties. (\$20.13/hr x 8 hrs/day x 30 days x
22 985 Class Members.) (Id. ¶ 48).

23 Defendants once again defend that no unpaid wages are owed as Defendants did not fail
24 to pay for all hours worked. Defendants further defend that no waiting time penalties are owed
25 for unpaid premium pay per *Naranjo* and that, anyhow, all premium pay was paid. Defendants
26 further contend that their actions were not willful as required for penalties to issue and that, thus,
27 waiting time penalties cannot be awarded. Defendants further contend that they cannot be
28 responsible for any alleged waiting time penalties owed to contingent workers. Plaintiffs believe

1 that the decision in *Naranjo* will be reversed by the California Supreme Court and that they will
2 succeed on their claims for failure to pay wages. However, it still must acknowledge the risks
3 involved that *Naranjo* is upheld, a failure to certify the unpaid wages claim, and a finding that
4 their actions were not willful, among other things. Thus, Plaintiffs believe that a violation rate
5 of ten percent for this claim is reasonable. As such, Plaintiffs are informed and believe it
6 reasonable, when taking into account Defendants’ defenses, and other attendant risks, to
7 calculate the relief that could reasonably be expected to be rewarded at trial to be \$475,873
8 (\$20.13/hr x 8 hrs/day x 30 days x 985 Class Members x .1). (Id. ¶ 49).

9 **8. PAGA Penalties**

10 Plaintiffs calculate from the time and payroll data provided that there were approximately
11 134,410 pay periods in the relevant time period (*i.e.*, May 10, 2018 to September 15, 2021), which
12 amounts to 1 year before providing notice to the LWDA through the end of the Class Period).
13 Plaintiffs’ allegations under PAGA are substantially similar to those brought in the Class Action
14 (*i.e.*, failure to pay wages, failure to provide meal and rest periods, wage statement violations,
15 waiting time penalties and failure to reimburse). (Id. ¶ 50).

16 Per PAGA, for the first pay period, the PAGA penalty is \$100 and for each subsequent pay
17 period, the PAGA penalty is \$200 per pay period. Plaintiffs contend that there are at least seven
18 PAGA violations amounting to a potential exposure of \$107,528,000, calculated conservatively
19 using the initial \$100 penalty (\$100/pay period x 134,410 pay periods x 8 violations). (Id. ¶ 51).

20 Defendants, however, believe that no PAGA penalties are likely to be awarded and, even
21 if they were, the maximum exposure calculated by Plaintiffs’ Counsel is vastly overstated. (Id. ¶
22 52). Defendants further contend that for several PAGA claims that the time period only relates
23 back to June 24, 2019 based on the Court’s ruling regarding Plaintiff Benitez’s PAGA lawsuit.
24 Defendants further defend that PAGA penalties cannot and should not be stacked and that, even if
25 they could, very few Courts have ever exercised discretion to stack them. (Id. ¶ 53). Defendants
26 also contend that only a \$100 per pay period penalty amount is appropriate. Specifically, they
27 contend that until “notified that it is violating a Labor Code provision ... the employer cannot be
28 presumed to be aware that its continuing underpayment of employees is a “violation” subject to

penalties.” (*Amaral v. Cintas Corp. No. 2 [Amaral]* (2008) 163 Cal. App. 4th 1157, 1209.) Thus, Defendants contend that subsequent violations in the PAGA context means not just later in time but following notice to the employer that it is in violation of the Labor Code. (*Patel v. Nike Retail Servs., Inc.* (N.D. Cal. 2014) 58 F.Supp.3d 1032, 1042; accord *Amaral*, 163 Cal. App. 4th at 1209 [only “after the employer has learned its conduct violates the Labor Code, the employer is on notice that any future violations will be punished ... at twice the rate of penalties ... that were imposed for the initial violation”].) (Id. ¶ 54).

Third, Defendants deny that a violation for each pay period can be established. Defendants state that because the PAGA Action heavily relies on the same allegations made in the Class Action, they are subject to the same defenses, and, thus, for the same reason Defendants believe there will be no damages collectible in the class action, no PAGA penalties would be awarded, either. (Id. ¶¶ 55-56).

Fourth, Defendants assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial (despite Plaintiffs’ contentions that there is no manageability requirement for trial). (Id. ¶ 57).

Finally, Defendants point out that there is no conduct shown by Plaintiffs that would demonstrate any Labor Code violations by Defendants are knowing and intentional such that PAGA penalties would be justified. Defendants contend that an award of PAGA penalties *in addition to* class action damages is discretionary, and thus insist a Court is unlikely to exercise its discretion to award *any* PAGA penalties in this Action where class action damages are available to Class Members. Defendants further contend that such an award of PAGA penalties in addition to class action damages would constitute an unjust, arbitrary, oppressive or confiscatory double recovery. (Id. ¶ 58).

While Plaintiffs believe that it is possible to recover the subsequent violation rate for penalties and that stacking is permissible, Plaintiffs also understand the risks inherent should the Court not exercise its discretion to grant any PAGA penalties, in addition to potential issues on the merits, trial manageability, and the possibility that the Court does not use permit stacking of

1 penalties or permit the use of the subsequent violation rate when providing penalties. As such,
2 Plaintiff believes a 95% discount of this Claim to be reasonable. (Id. ¶ 59).

3 As such, Plaintiff is informed and believes it reasonable, when taking into account
4 Defendants’ defenses, and other attendant risks, to calculate the relief that could reasonably be
5 expected to be rewarded at trial to be \$5,376,400 (\$100/pay period x 134,410 pay periods x 8
6 violations x .05.). (Id. ¶ 60).

7 **9. Conclusion**

8 When including derivative penalties, such as waiting time penalties, wage statement
9 violations, and discretionary PAGA penalties and making assumptions in Plaintiffs’ favor,
10 Plaintiffs view Defendants’ reasonable exposure in this matter as \$20,806,506. In all,
11 Plaintiffs’ counsel obtained a Gross Settlement Amount of \$7,000,000.00. Class Counsel
12 considers this to be, under these limited circumstances, a fair, reasonable and adequate
13 settlement for Class Members when considering all issues and risks related to liability, the issues
14 with manageability at trial, the manner in which the availability of wage statement violations and
15 waiting time penalties have been put at risk by the cases of *Serrano* and *Naranjo*, the
16 discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable,
17 and, ~~Officers for Justice v. City of Los Angeles~~ *Officers for Justice v. (Sail) Service Comm’n*, (9th Cir. 1992) 688 F.2d 615, 628 [(“it is well-
18 settled law that a cash settlement amounting to only a fraction of the potential recovery does not
19 ... render the settlement inadequate or unfair”].) (Id. ¶ 61).

20 **VIII. THE PROPOSED ATTORNEYS’ FEES AND COSTS ARE** 21 **REASONABLE**

22 Class Counsel seeks an attorneys’ fees award of \$2,333,333.33 which is one third (33-
23 1/3%) of the Gross Settlement Amount, and actual costs. The requested fee falls well within the
24 historical range of attorneys’ fee awards under the common fund theory, which is generally from
25 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive,
26 and time-consuming litigation on a contingent fee basis. Indeed, this case was litigated over years
27 with much conflict between counsel and in various forums, as a result of filing five separate actions;
28 it required motion practice regarding intervention and consolidation; substantial discovery was

1 done including a dozen depositions of the Parties; extensive investigation was done with the help
2 of Plaintiffs and consultants of time and payroll records; and months of the exchange between
3 opposing counsel of differing views regarding the certifiability of Plaintiffs' claims, and the merits
4 of Plaintiffs' actions. Moreover, significant expense was expended, including filing fees related to
5 the various actions, deposition fees for nine person most knowledgeable depositions; the utilization
6 of forensic consultants to help analyze time and payroll records, as well as to attend a mediation to
7 try to resolve the Class Action and the PAGA action, among other things. (Id. ¶¶ 62-65; Han
8 Decl. ¶¶ 21-25).

9 The California Supreme Court has expressly recognized that the awarding of a percentage
10 of the "common fund" created as a result of the settlement is an appropriate method for the
11 calculation of an attorneys' fees award in a class action. (*Laffitte v. Robert Half Intern. Inc.* (2016)
12 1 Cal.5th 480, 503-504.)

13 Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which
14 are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the
15 great risk undertaken by Class Counsel. The requested attorneys' fees will not be opposed by
16 Defendants and are well within established guidelines. (Id. ¶ 65).

17 **IX. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED**
18 **PLAINTIFFS AND CLASS REPRESENTATIVES IS REASONABLE**

19 Plaintiffs, who served as a named Plaintiffs on separate respective actions, are entitled to
20 an enhancement award for their service as a class representative, being deposed by Defendants'
21 counsel, for answering extensive questions by Class Counsel, being available by phone during
22 mediation, time spent on answer written discovery and producing documents, the risk in being the
23 named plaintiff, not to mention that Plaintiffs will be providing Defendants a general release of all
24 claims in exchange for the enhancement award. Defendants do not oppose the requested
25 enhancement to Plaintiffs. Class Counsel can attest that Plaintiffs devoted a great deal of time
26 assisting Plaintiffs' counsel in this case, participating in their depositions, communicated with
27 counsel very frequently, and was a very valuable participant in the strategy for and success in
28 obtaining a resolution of the multiple actions. Plaintiffs risked intrusive discovery and the payment

1 of employer costs. In the experience of Class Counsel, the typical enhancement award in wage
2 and hour class actions ranges from approximately \$2,500 to \$40,000, although some awards are
3 higher. Class Counsel seeks a modest enhancement of \$10,000.00 to the Plaintiffs for their
4 services. (Id. ¶¶ 66-68; Han Decl. ¶¶ 26-30).

5 **X. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

6 **A. The Class Should Be Preliminarily Certified**

7 In California, there are two certification prerequisites: (1) the existence of an “ascertainable
8 class” and; (2) “a well-defined community of interest in the questions of law and fact involved
9 affecting the parties to be represented.” (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th
10 639, 647.) In addition, as set forth above, California courts utilize the procedures prescribed by
11 the Federal Rules of Civil Procedure in class actions filed in California. (*Schneider v. Vennard*
12 (1986) 183 Cal.App.3d 1340, 1345-46; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 695;
13 *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800.) Indeed, to certify a class, the party advocating class
14 treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or
15 fact; (3) class representatives with claims or defenses typical of the class; and (4) class
16 representatives who can adequately represent the class.” (*Williams v. Sup. Ct.* (2013) 221
17 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
18 Each of the criteria for class certification is satisfied in this instance:

19 **1. Numerosity** – According to the California Supreme Court, a putative class
20 is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable
21 and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class
22 action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed
23 satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D.
24 454, 461.)

25 Defendants identified potential class members from the class list provided by Defendants
26 to Plaintiffs and which Defendants have also agreed to provide to the Claims Administrator with
27 all identifying information. The information provided by Defendants indicate that there are 6,855
28

1 putative class members. This number far exceeds the minimum number of individuals required to
2 meet the numerosity requirement. (Hawkins Decl. ¶ 69).

3 **2. Commonality** - California law also requires that “questions of law or fact
4 common to the class [be] substantially similar and predominate over the questions affecting the
5 individual members.” (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)
6 Common issues predominate when they would be “the principal issues in any individual action,
7 both in terms of time to be expended in their proof and of their importance.” (*Vasquez v. Sup.*
8 *Ct.* (1971) 4 Cal.3d 800, 810; *see also Hatashi v. First American Home Buyers Protection Corp.*
9 (2014) 223 Cal.App.4th 1454, 1462-1463.) Common questions need only be “sufficiently
10 pervasive to permit adjudication in a class action rather than in a multiplicity of suits.” (*Vasquez*
11 *v. Sup. Ct.* (1971) 4 Cal.3d 800, 810.) Commonality is easily satisfied if there is one issue
12 common to class members. (*Hanlon v. Chrysler Corp.* (9th Cir. 1988) 150 F.3d 1011, 1019.)

13 Here, common issues, without limitation, include whether Defendants violated applicable
14 wage and hour laws, *i.e.*, failed to pay their non-exempt employees overtime as a result of failure
15 to include bonus pay into the overtime rate of pay, to provide compliant meal or rest breaks or
16 compensation at one additional hour at the regular rate of pay in lieu thereof, failure to provide
17 accurate wage statements, failure to provide all wages upon termination or within 72 hours after
18 resignation, and failure to reimburse for business expenses. Because there are common issues,
19 this requirement is satisfied for purposes of settlement. (*Id.* ¶ 70).

20 **3. Typicality** - Typicality requires only that the named plaintiff’s interests in
21 the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013)
22 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)
23 A representative plaintiff’s claims are typical if they arise from the same event, practice, or course
24 of conduct that gives rise to the claims of other class members, and if his or her claims are based
25 on the same legal theories. (*Miller v. Woods* (1983) 16 Cal.App.3d 862, 874; *accord In re*
26 *Broadwing, Inc. ERISA Litigation* (S.D. OH. 2006) 252 F.R.D. 369, 377, citing *In re Am. Med.*
27 *Sys.* (6th Cir. 1996) 75 F.3d 1069, 1079, quot. Newberg on Class Actions, § 3-13 at 3-76.) Indeed,
28 when the same underlying conduct affects the named plaintiff and the class sought to be

1 represented, the typicality requirement is met irrespective of any varying fact patterns that may
2 underlie individual claims. (*See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467,
3 473 [named plaintiff's interests must only be significantly similar to other class members].)

4 In this case, Plaintiffs' claims are precisely the same as those of the class they seek to
5 represent: like other members of the Class, they were employed by Defendants during the
6 relevant time period as non-exempt employees, and Defendants' wage policies were uniformly
7 applied to their non-exempt employees. (*Id.* ¶ 71).

8 As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
9 1341, explained:

10 [I]t has never been the law in California that the class representative must have
11 **identical** interests with the class members. The only requirements are that
12 common questions of law and fact **predominate** and that the class representative
be **similarly** situated.

13 (*Id.* at 1347, citations omitted, emphasis in original.) Accordingly, Plaintiffs' claims are typical
14 of those of the Class Members.

15 **4. Adequacy of Representation** - To maintain a class action, the
16 representative plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.*
17 (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th
18 1004, 1021.) Adequacy of representation consists of two components. First, there must be no
19 disabling conflicts of interest between the class representatives and the class. Second, the class
20 representative must be represented by counsel who are competent and experienced in the kind
21 of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450;
22 accord *In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.)

23 Both criteria are met in this instance.

24 **i. No Disabling Conflict of Interest Exist Between the Class**
25 **Representative and the Class**

26 No conflicts, disabling or otherwise, exist between the Class Representatives and Class
27 Members because the Plaintiffs have allegedly been damaged by the same alleged conduct (*i.e.*,
28 they were classified as a non-exempt employee, not paid premium pay, etc.) and thus have the

incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery. (Id. ¶ 72; Lucio Decl. ¶ 10).

ii. Class Counsel are Experienced Class Action Attorneys

Class Counsel are experienced class action attorneys, have been appointed as class counsel in other class actions, and have a successful track record in litigating class actions. After a thorough investigation and settlement discussions, the Parties arrived at terms that they viewed was in the best interest of both the Class Members and the Parties. (Id. ¶¶ 73, 76-79; Han Decl. ¶¶ 2-6; Lucio Decl. ¶¶ 3-10).

Plaintiffs' goals have been realized via redress for the employees whose wage and hour rights were violated. While Defendants deny liability, it has nonetheless agreed to settle the matter to avoid any potential expense. Should the Court refuse to grant preliminary approval of this Settlement, many of the Class Members may be denied any recourse for Defendants' alleged violations. (Id. ¶ 74).

5. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

In that vein, "[t]his state has a public policy which encourages the use of the class action device." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299, citing *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 240) Indeed, "with respect to the superiority of the class action mechanism ... courts regularly certify class actions to resolve wage and hour claims." (*Id.* at 300.) "In this arena the class action mechanism allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation." (*Ibid.*) Moreover, the issues slated for contest are primarily common issues involving common evidence. It would not be efficient or fair to relegate these complaints to multiple trials." (*Ibid.*, citing *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208; see *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034.)

1 “Indeed, as the California Supreme Court elaborated in *Brinker Restaurant*
2 *Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, ‘a theory of liability that an employer
3 has a uniform policy and that that policy measured against wage order
4 requirements, allegedly violates the law – is by its nature a common question
5 entirely suited for class treatment. [Citation.] In the general case to prematurely
6 resolve such disputes, conclude a uniform policy complies with the law, and
7 thereafter reject class certification ... places defendants in jeopardy of multiple
8 class actions, with one after another dismissed until one trial court concludes there
9 is some basis for liability and in that case approves class certification. [Citation.]
10 It is far better from a fairness perspective to determine class certification
11 independent of threshold questions disposing of the merits, and thus permit
12 defendants who prevail on those merits, equally with those who lose on the merits,
13 to obtain the preclusive benefits of such victories against an entire class and not
14 just a named plaintiff.’

15 (ABM Industries Overtime Cases (2017) 19 Cal.App.5th 277, 300, quot. *Brinker Restaurant Corp.*
16 *v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034.)

17 The Court further noted that:

18 “California courts consider ‘pattern and practice evidence, statistical evidence,
19 sampling evidence, expert testimony, and other indicators of a defendant’s
20 centralized practices in order to evaluate whether common behavior towards
21 similarly situated plaintiffs make class certification appropriate. [Citation.] Other
22 relevant factors include ‘whether the class approach would serve to deter and
23 redress alleged wrongdoing.’ [Citation.] Moreover, in the wage and hour context,
24 ‘[w]e have recognized that retaining one’s employment while bringing formal legal
25 action against one’s employer is not ‘a viable option for many employees,’ ‘and
26 thus a class action may be appropriate as a current employee who individually sues
27 his or her employer is at greater risk of retaliation.’ [Citations.] And ...our high
28 court noted that class actions may be particularly useful for immigrant workers
with limited English language skills, as illegal employer conduct might otherwise
escape their attention.”

(ABM Industries Overtime Cases (2017) 19 Cal.App.5th 277, 300, citations omitted.)

The California Supreme Court has also noted that where not a lot of individual suits are
brought by putative class members, it indicates that they have little interest in personally
controlling their claims.” (*Dynamex Operations West, Inc. v. Sup. Ct.* (2018) 4 Cal.5th 903, 924.)
The Court should also consider that “consolidating all the claims before a single court would be
desirable because it would allow for consistent rulings with respect to all the class members’
claims.” (*Ibid.*)

This wage and hour class action is no exception and meets all the criteria to deem it a
superior vehicle for resolution of the issues it seeks to resolve. First, it pertains to a uniform
practice including not calculating incentive pay in the overtime rate of pay or premium pay, lunch

1 and rest break policies, and others applying to all non-exempt employees, which allows claims of
2 many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation
3 and affords small claimants with a method of obtaining redress for claims which otherwise would
4 be too insufficient to warrant individual litigation. It is also brought by former employees who are
5 not at the greater risk of retaliation of current employees who are less likely to seek such redress
6 for themselves. Moreover, a class action would eradicate the concern of inconsistent rulings
7 regarding the wage and hour issues brought as part of this class action. (Id. ¶ 75).

8 Thus, the class action meets all criteria for certification and a lesser standard of scrutiny
9 applies when evaluating these criteria for settlement purposes. Accordingly, the Class meets all
10 criteria for certification and should be certified for purposes of effectuating this settlement. (*Caro*
11 *v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 664, 654 [“[i]f the statutory criteria are satisfied,
12 a trial court is under a duty to certify the class and is vested with no discretion to deny certification
13 based upon other considerations”]; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1800, 1807, n.
14 19, citations omitted [there is a “lesser standard of scrutiny for settlement cases”].)

15 **XI. CONCLUSION**

16 The proposed Class Settlement is fair, adequate, and reasonable. It will result in substantial
17 payments to class members; it is non-collusive; and it was achieved as the result of informed,
18 extensive, and arms’ length negotiations conducted by counsel for respective parties who are
19 experienced in wage and hour class action litigation.

20 For the foregoing reasons, the parties respectfully request that the Court grant preliminary
21 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of
22 the proposed Class Notice submitted herewith, and set a date for the final approval hearing.

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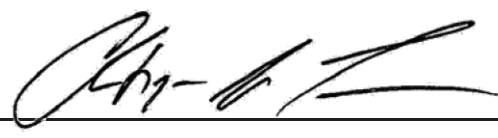
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Respectfully Submitted,

Dated: Noveber 18, 2021

JAMES HAWKINS, APLC

BY: 

Attorneys for Plaintiffs Lan Le and Mario Estrada-
Peralta, on behalf of themselves and all others
similarly situated