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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MANUEL GODOY, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

INTERTRADE INDUSTRIES, LTD., a
California corporation; and DOES 1 through 10,
inclusive,
Defendants

Case No.: 30-2020-01151921-CU-OE-CXC

[Assigned to Hon. Randall J. Sherman, Dept.
CX105]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: June 24, 2022
Time: 10:00 a.m.
Courtroom: Dept. CX105
Judge: Hon. Randall J. Sherman

Action Filed: July 17, 2020
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 24, 2022, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department CX105 of the above-captioned Court, located at 751 W. Santa Ana
4 Boulevard, Santa Ana, California 92701, Plaintiff MANUEL GODOY (“Plaintiff”) will and hereby does
5 move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the JOINT STIPULATION OF CLASS ACTION
9 SETTLEMENT, as amended by the FIRST AMENDMENT TO JOINT STIPULATION OF
10 CLASS ACTION SETTLEMENT (“Settlement” or “Agreement”);

11 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

12 4. Appointing Plaintiff as the Class Representative;

13 5. Confirming the sufficiency of the notice process;

14 6. Approving Phoenix Settlement Administrators as the third-party administrator and
15 approving its costs of administration;

16 7. Ruling that Settlement Class Members who did not timely submit requests for
17 exclusion from the settlement as set forth in the Agreement have released their claims against
18 Defendant and the other releasees as set forth in the Agreement;

19 8. Ruling that Settlement Class Members who did not timely object to the settlement
20 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
21 appeal of the Court’s Order;

22 9. Awarding the sums requested in the Motion;

23 10. Directing that the clerk of the Court enter Final Judgment after entry of the Court’s
24 Order granting final approval; and,

25 11. Without affecting the finality of the final judgment, reserving continuing
26 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
27 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

28 Good cause exists to grant this Motion because:

1. The Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382;

2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class; and,

4. The completed notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: May 31, 2022

MOON & YANG, APC

By:


Kane Moon

Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff MANUEL GODOY

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court finally approve the proposed class action settlement set forth in the JOINT STIPULATION
4 OF CLASS ACTION SETTLEMENT, as amended by the FIRST AMENDMENT TO JOINT
5 STIPULATION OF CLASS ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendant
6 INTERTRADE INDUSTRIES, LTD.(“Defendant”).

7 Defendant manufactures plastics and foam products. Defendant services the aerospace,
8 automotive, consumer products, electronics, food service, retail displays, medical, and packaging
9 industries in the State of California. Plaintiff was employed by Defendant and alleged various wage and
10 hour violations, which Defendant denies. After informal discovery, the exchange of documents, and an
11 arm’s-length mediation session with an experienced mediator, Hon. Carl J. West (Ret.), Plaintiff and
12 Defendant (collectively referred to herein as the “Parties”) reached a proposed class action settlement
13 with a gross settlement amount (“GSA”) of **\$450,000.00** in compromise of disputed claims asserted on
14 behalf of the below-defined Class consisting of **195** members. Plaintiff believes that this settlement is a
15 fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage and hour
16 violations and penalties asserted in this case. The Class response supports the conclusion that the
17 Settlement is reasonable; there were no objections or exclusion requests.

18 Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the
19 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibits 1 and 2 thereto).
20 For the Court’s convenience, below is a summary of the key provisions of the Settlement.
21

22 **II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER**
23 **PRELIMINARY APPROVAL**

24 Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The
25 Settlement Administrator, Phoenix Settlement Administrators (“PSA”), sent individual Notices to 195
26 Class Members on February 22, 2022. (Declaration of Taylor Mitzner [“Mitzner Decl.”], ¶¶ 3-5.) Of the
27 Notices that were mailed, 14 were returned after mailing. (Mitzner Decl., ¶ 6.) After skip tracing,
28 updated addresses were located for 12 Notices were remailed with updated addresses, with two returned

a second time. (Mitzner Decl., ¶ 6.) Ultimately, only 4 notice packets are considered undeliverable. (Mitzner Decl., ¶ 7.) No Class Members requested to be excluded from the Settlement, and no Class Members objected in writing. (Mitzner Decl., ¶¶ 8-9.) There were no work week disputes. (Mitzner Decl., ¶ 10.)

PAYMENTS: For 195 Class Members, the average **gross** payment per Class Member is **\$2,307.69**. The Net Settlement Amount (excluding PAGA) is estimated to be at least **\$209,500** (because requested costs are below \$15,000, the actual Net Settlement Amount will be slightly higher), resulting in an average **net** payment per Class Member of at least **\$1,074.36**, before any tax withholdings. (Settlement, ¶ 26(g).) The highest net payment is estimated to be **\$3,876.43** (for 13 employees who worked 284.86 work weeks in the Class Period), and the lowest net payment is estimated to be **\$1.91** (for 3 employees who worked only 0.14 total weeks in the Class Period). (Mitzner Decl., ¶ 12.) In addition, there are one hundred fifty-seven (157) Class Members who worked 3,754.71 PAGA Periods during the PAGA Period. The average payment to these individuals is **\$95.54** (“PAGA Payment”). (Mitzner Decl., ¶ 13.)

III. THE MAJOR TERMS OF SETTLEMENT

As modified following the directions of the Court, the provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 19);
- **Settlement Amount:** Defendant will pay a maximum of **\$450,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$2,307.69**. (Settlement, ¶ 26(c).)
- **Class Size:** Class Size: **195** individuals as of the date of notice, who worked 15,395.00 work weeks. (Mitzner Decl., ¶ 3.)
- **PAGA Group Size:** **157** individuals as of the date of mediation, who worked 3,754.71 pay periods. (Leviant Decl., ¶ 18);
- **Escalator Clause:** The number of Class Members is approximately one hundred ninety-three

(193) as of June 29, 2021, and the number of workweeks worked in the Class Period for those Class Members was approximately fourteen thousand eight hundred thirty-three (14,833.00) as of that date. If it is later determined that, on the date of preliminary approval, the number of workweeks in the Class Period is more than 10% greater than the estimated number of workweeks on June 29, 2021, the Gross Settlement Amount shall be increased by one percent for each percent over the 10% threshold that the actual number of workweeks exceeds the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%) (the “Escalator Clause”). (Settlement, ¶ 26(d).) The Escalator Clause is not triggered.

- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));
- Certification: Plaintiff addresses certification below, at Part V.A., and in the *previously-filed* Declaration of H. Scott Leviant in Support of Plaintiff’s Motion for Preliminary Approval, at Paragraphs 34-40. Certification was discussed in greater detail in the Motion for Preliminary Approval.
- No Claim Form: No claim form is required (Settlement., ¶ 26(f));
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the First Amended Complaint (Settlement, ¶ 37);
- PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 11, 14, 15 and 37(c)(3));
- Release Effective Date: The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 37(b));
- Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the payment to the

1 LWDA, the remainder will be available for distribution to Class Members who do not opt
2 out, with each Class Member receiving a share based on the number of workweeks each
3 Class Member worked for a Defendant within the Class Period. The Net Settlement
4 Amount is estimated to be at least **\$224,500** (this includes the \$15,000 PAGA amount to
5 employees – Phoenix separates the PAGA amount out in its declaration) resulting in an
6 average **net** payment per Class Member of at least **\$1,163.21** (with the \$15,000 PAGA
7 amount to employees included) before any tax withholdings. (Settlement, ¶ 26(g).)
8 Including PAGA, the highest net payment is estimated to be **\$4,009.14** (for 13 employees
9 who worked 284.86 work weeks in the Class Period), and the lowest net payment is
10 estimated to be **\$2.12** (for 3 employees who worked only 0.14 total weeks in the Class
11 Period).

- 12 • Tax Allocation: The amounts distributed to Class Members will be characterized as one-
13 third alleged unpaid wages, two-thirds as alleged unpaid penalties and unpaid interest, and
14 PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- 15 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
16 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
17 constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- 18 • Settlement Administrator: The notice portion of the Settlement will be administered by a
19 third-party Administrator, Phoenix Settlement Administrators, and the Parties estimated that
20 the costs of administration should not reasonably exceed \$15,000.00. Phoenix Settlement
21 Administrators' low bid for settlement administration services in the amount of **\$8,000.00**
22 was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));
- 23 • Class Data for Administration: The Settlement Administrator received the Class List within
24 15 calendar days of Preliminary Approval, used the NCOA database to update the Class
25 List, and then used skip tracing on returned Notices (Settlement, ¶ 32(a));
- 26 • Notice: The Notice issued within 14 days of receipt of the Class List (Settlement, ¶ 32(b)).
27 The Notice describes how to dispute workweeks, submit and objection in writing, in person,
28 or through an attorney, or request exclusion (Settlement, ¶ 26(s)).

- 1 • Notice Language: Notice issued in English and Spanish (Settlement, ¶ 26(t));
- 2 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
- 3 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- 4 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
- 5 Settlement Administrator, is the same as the procedure for submitting a writing objection
- 6 (Settlement, ¶¶ 26(w) and 26(x));
- 7 • PAGA Allocation: From the GSA, **\$60,000** will be allocated to settle claims brought
- 8 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
- 9 (“PAGA”), and seventy-five percent (75%), or **\$45,000**, will be paid to the California Labor
- 10 & Workforce Development Agency. (Settlement, ¶ 9.)
- 11 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
- 12 attached to the Leviant Declaration.
- 13 • Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for
- 14 Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the
- 15 GSA (Settlement, ¶ 26(n));
- 16 • Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to
- 17 exceed 33 1/3% of the GSA (**\$150,000.00**), and actual costs, in the amount of **\$11,028.25**,
- 18 to be paid out of the GSA (which amount is below the \$15,000 cap on cost reimbursement)
- 19 (Settlement, ¶ 26(m)).
- 20 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- 21 • Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
- 22 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be
- 23 directed to the California State Controller’s Office for Unclaimed Property in the name of
- 24 each Class Member who failed to cash their Settlement Payment (Settlement, ¶¶ 34-35);
- 25 • Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after
- 26 entry (Settlement, ¶ 30);
- 27 • Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement
- 28 with Class Members (Settlement ¶ 58).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

On July 17, 2020, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) Failure to Pay Minimum and Regular Rate [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. On November 20, 2020 Plaintiff filed his First Amended Complaint adding the eight case of action for civil penalties under PAGA [Cal. Lab. Code § 2699, et seq.]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent. (Leviant Decl., ¶ 4.)

Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] (“PAGA”). On November 16, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. (Leviant Decl., ¶ 5.)

B. Pre-Mediation Data Production and Analysis

The Parties have conducted informal discovery and investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of informal data and discoverable information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of each purported subclass within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents reflecting their wage and hour policies and practices during the Settlement Period

1 and information regarding the total number of current and former employees in the Class. (*Id.*)

2 After reviewing documents regarding Defendant's wage and hour policies and practices and
3 other information obtained during the informal exchange of discovery, Class Counsel were able to
4 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
5 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
6 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
7 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

8 **C. Settlement**

9 On June 29, 2021, the Parties mediated before a mediator, Hon. Carl J. West (Ret.), who is a
10 highly experienced and well-regarded mediator for wage and hour class action litigation. (Leviant Decl.,
11 ¶ 8.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the
12 litigation as well as the merits of the claims and defenses. (*Id.*) The Parties have not been able to reach a
13 settlement at the mediation. However, following the settlement negotiations held by the Parties after the
14 mediation, the Parties have reached an agreement regarding the substantive terms of a class-wide
15 settlement, pending the Parties' agreement on a long-form class settlement agreement. (*Id.*) The Parties
16 then signed a long form settlement agreement (the Agreement). (*Id.*)

17 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
18 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
19 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to
20 enter into a Settlement that confers substantial relief upon the Class.

21 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth
22 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
23 (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements
24 for establishing class action certification with respect to this class have been met and are met. (*Id.*) If
25 this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class
26 certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with
27 prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all
28 Class Members, including all within the class definition who have not elected to exclude themselves

1 from the Class. (*Id.*)

2 **V. CLASS DEFINITION**

3 The Class is defined as follows:

4 All individuals employed by Defendant in California and classified as “non-exempt” at
5 any time during the Class Period (the “Class Period” is July 17, 2016 through January 1,
6 2022). “Settlement Class Members” are those Class Members who do not submit timely
7 exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

8 (Leviant Decl., ¶ 34 and Exhibit 1.)

9 The PAGA Employee is defined as follows:

10 All Class Members that worked at any time during the PAGA Period (the “PAGA
11 Period” is July 17, 2019 through January 21, 2022, whichever is earlier.) All PAGA
12 Employees are “aggrieved employees” as defined pursuant to PAGA. PAGA
13 Employees cannot opt out of the settlement of the PAGA claim.

14 (Settlement, ¶¶ 10-11.)

15 **VI. DISCUSSION**

16 **A. The Court Should Certify the Class Because It Meets All the Requirements for**
17 **Certification for Settlement Purposes Under CCP § 382**

18 Under Code of Civil Procedure § 382,¹ class certification is warranted so long as there is a
19 numerous and ascertainable class with a well-defined community of interest among its members and that
20 a “class action proceeding is superior to other means for a fair and efficient adjudication of the
21 litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any
22 doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to
23 later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this
24 Settlement only, Defendant has agreed not to oppose conditional certification of the proposed class
25 action. (Settlement ¶ 26.)

26 “The certification question is ‘essentially a procedural one that does not ask whether an action is

27 ¹ Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under
28 California law, states in relevant part, “[W]hen the question is one of a common or general interest, of
many persons, or when the parties are numerous, and it is impracticable to bring them all before the
court, one or more may sue or defend for the benefit of all.”

1 legally or factually meritorious.” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
2 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
3 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
4 App. 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the
5 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
6 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
7 process and to the litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of
8 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous
9 separate actions” *See, e.g., id.*

10 “[I]t is also well established that trial courts should use different standards to determine the
11 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
12 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
13 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
14 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
15 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
16 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

17 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
18 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
19 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
20 “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;
21 *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) (“the use of the
22 tentative settlement class procedure was appropriate in this case”), *aff’d*, 572 F.2d 657 (9th Cir.), cert.
23 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
24 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
25 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d (1993) § 30.45.

26 In view of these standards, ***as discussed more thoroughly as part of the preliminary approval***
27 ***motion already granted by the Court***, the Settlement Class should be certified for purposes of settlement.
28 Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1 **B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and**
2 **Reasonable Compromise of Disputed Wage Claims in View of Defendant’s**
3 **Potential Liability Exposure and the Risks of Continued Litigation**

4 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
5 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
6 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
7 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
8 settlement approval, notice being given to class members, and a final fairness and approval hearing being
9 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
10 below, this Court should finally approve the Settlement and enter Judgment.

11 **1. Class Action Settlements Are Subject to Review and Approval.**

12 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
13 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
14 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
15 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
16 motion seeks *final approval* and the entry of a Judgment.

17 To evaluate a settlement, the trial court must receive “basic information about the nature and
18 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
19 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
20 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
21 theoretical amount that the class could recover:

22 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all
23 cases to contain evidence in the form of an explicit statement of the maximum amount
24 the plaintiff class could recover if it prevailed on all its claims—a number which
25 appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims,
 require any such explicit statement of value; it requires a record which allows “an
 understanding of the amount that is in controversy and the realistic range of outcomes
 of the litigation.”

26 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

1 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
2 **Between Experienced Counsel with the Assistance of a Highly Qualified**
3 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

4 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
5 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
6 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
7 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
8 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
9 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
10 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
11 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
12 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

13 Relevant factors in making this determination, include, but are not limited to:

14 [T]he complexity and likely duration of further litigation, the risk of maintaining class
15 action status through trial, the amount offered in settlement, the extent of discovery
16 completed and the state of the proceedings, the experience and views of counsel, the
17 presence of a governmental participant, and the reaction of the class members to the
18 proposed settlement.

19 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
20 considered to each case and give due regard to “what is otherwise a private consensual agreement
21 between the parties.” *Id.*

22 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
23 counsel with the assistance of highly regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the
24 claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that
25 information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail
26 about their work experiences and Defendant’s practices.

27 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
28 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff’s
29 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the
30 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed

below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

Finally, no Class Member objected and no Class Member requested exclusion. (Mitzner Decl., ¶¶ 8-9.)

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendant's Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.*, quoting *Air Line Stewards & Stewardesses Ass'n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), citing *Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014); (ii) the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see Labor*

Code § 2699(e)(1); (vi) the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes; and, (vii) the risk that lengthy appellate litigation could ensue. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately 195 members of the Class, the average **gross** recovery is **\$2,307.69** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$1,163.21**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

The maximum calculated reasonable exposure is **\$2,905,841.80**, including PAGA penalties. (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of **\$450,000.00** is about 65% of the **\$696,926.85** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- A reasonably estimated exposure for unpaid wages due to invalid alternative workweek schedule was calculated, with the assistance of an expert, to be approximately **\$671,486.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$377,710.88**, assuming certification probability of 75% and merits success at 75%.
- A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the assistance of an expert, to be approximately **\$17,305.00**. However, with the risk

factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$9,734.06**, assuming certification probability of 75% and merits success at 75%.

- The reasonably estimated exposure for rest break violations over the class period was calculated at **\$264,465.00**, but with low chances of certification and proof of liability (20% and 25% respectively) for a risk-adjusted exposure of **\$13,223.25** (based on missed breaks at least once per pay period for 100% of the class).
- The reasonably estimated exposure for meal break violations over the class period was calculated at **\$322,500.80**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **\$64,500.16**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$26,835.00** and **\$67,423.50**, respectively, on maximum exposures of **\$268,350.00** and **\$674,235.00**, respectively.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$559,426.85**, excluding PAGA.² (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$687,500.00**, but a risk adjusted value of **\$137,500.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (*See*, Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even

² In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1 after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than
2 conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California*
3 *sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at
4 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
5 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); see also, *Findings of the Study of California Class Action Litigation, 2000-2006*,
6 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
7 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
8 settlement *or* as part of a contested certification motion).

9 Here, the estimated certification probabilities are *above* the average rate at which cases were
10 certified in California over the study years, based upon data available through the California Courts
11 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
12 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 15.4% of the maximum
13 theoretical recovery (estimated to be approximately \$2,905,841.80, including PAGA), which falls within
14 the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to
15 evaluate the result by examining only the premium wages at issue (approximately \$1,275,757, with no
16 risk reduction), excluding penalties and interest; the settlement is well over 35.2% of the premium wages
17 (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.³
18 This Settlement achieves the goals of the litigation.

19 4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, 20 and Reasonable.

21 The proposed method of allocating the Settlement Fund to Class Members also is fair and
22 reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members
23

24 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
25 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
26 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
27 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
28 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

1 based on time worked by the Class Member during the Class Period, in relation to the total amount of
2 time worked by all participating Class Members collectively during the class period. This proposed
3 method is fair and reasonable because each Class Member's actual potential damages vary based on the
4 number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of
5 pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when
6 a higher number of incidents occur). A Class Member who worked a greater number of weeks for
7 Defendant will receive a larger payment under the Settlement than a Class Member who worked for a
8 shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

9 **5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and**
10 **Reasonable and Warrants Approval.**

11 The proposed enhancement payments to Plaintiff is intended to recognize the substantial
12 initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to
13 compensate named plaintiffs for the services they provide and the risks they incur during class action
14 litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*,
15 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
16 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving
17 a \$50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including
18 assistance prior to the mediation with information and substantial time conferring with counsel over the
19 course of this litigation and before it was filed. (Godoy Decl., ¶¶ 5-18; Leviant Decl., ¶ 33.) The
20 enhancement also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be
21 personally liable for all costs incurred regardless of the success of the litigation or class certification, as
22 well as the personal risk of facing intrusive discovery and potential disclosure to future employers that
23 Plaintiff sued a former employer, making future employment prospects uncertain. The requested
24 enhancement is less than twice the maximum estimated net Class Member payment and only 3.5 times
25 the average Class Member payment amount.
26
27
28

1 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
2 **and Reasonable and Merits Approval.**

3 a) *Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of*
4 *the Fund Recovered, Consistent with the Common Fund Method*

5 The request for attorneys’ fees as a percentage of the settlement fund is supported by the
6 “common fund theory,” where “one who expends attorneys’ fees in winning a suit which creates a fund
7 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
8 litigation costs.” *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against
9 the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

10 The purpose of the common fund approach is to “spread litigation costs proportionally among all
11 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes*
12 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied
13 “consistently in California when an action brought by one party creates a fund in which other persons are
14 entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v.*
15 *State of California*, 15 Cal. 3d 162, 167 (1975) (“[O]ne who expends attorneys’ fees in winning a suit
16 which creates a fund from which others derive benefits may require those passive beneficiaries to bear a
17 fair share of the litigation costs.”).

18 The California Supreme Court removed any lingering doubt about the use of the percentage of
19 the fund method to award attorney’s fees in California Courts:

20 We join the overwhelming majority of federal and state courts in holding that when
21 class action litigation establishes a monetary fund for the benefit of the class members,
22 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
23 court may determine the amount of a reasonable fee by choosing an appropriate
24 percentage of the fund created. The recognized advantages of the percentage method—
25 including relative ease of calculation, alignment of incentives between counsel and the
26 class, a better approximation of market conditions in a contingency case, and the
27 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
28 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97
 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
 516)—convince us the percentage method is a valuable tool that should not be denied
 our trial courts.

1 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, as strongly
2 encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based
3 upon the percentage of the fund methodology.

4 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund or the lodestar
5 method is used, the outcome is roughly the same: “Empirical studies show that, regardless whether the
6 percentage method or the lodestar method is used, fee awards in class actions average around one-third
7 of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent
8 with Plaintiff’s counsels’ experience in these types of cases. Here, Plaintiff’s attorneys request attorneys’
9 fees of **\$150,000.00** (one-third of the GSA), and costs of **\$11,028.25** (which is under the cap of \$15,000),
10 which includes payment for mediation, filing fees, legal research fees, and other standard expenses,
11 including the costs that will be incurred in filing this motion and appearing for the hearing. (Leviant
12 Decl., ¶ 32.) Given the efforts and risks in this case, as well as the results achieved, these amounts are
13 within the range of reasonableness and warrant *final approval*.

14 b) *Class Counsel Is Entitled to Attorneys’ Fees and Costs under the*
15 *California Labor Code and California’s Private Attorney General Statute*

16 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

17 [A]ny employee receiving less than the legal minimum wage or the legal overtime
18 compensation applicable to the employee is entitled to recover in a civil action the
19 unpaid balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney’s fees, and costs of suit.

20 Lab. Code § 1194.

21 As this litigation culminated in a Settlement that provides for a recovery of unpaid wages,
22 including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable attorneys’
23 fees and costs under the Labor Code.

24 Class Counsel is also entitled to a fee under California’s private attorney general statute, Code of
25

26 ⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
27 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
28 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 Civil Procedure § 1021.5. “The award of attorney’s fees is proper under section 1021.5 if ‘(1) plaintiffs’
2 action ‘has resulted in the enforcement of an important right affecting the public interest,’ (2) ‘a
3 significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a
4 large class of persons’ and (3) ‘the necessity and financial burden of private enforcement are such as to
5 make the award appropriate.’” *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of
6 the statute is “to encourage suits enforcing public policies by providing substantial attorneys’ fees to
7 successful litigants in such cases.” *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

8 The Action resulted in the enforcement of an important right affecting the public interest, as
9 Plaintiff sought to enforce Class Members’ rights to recover statutory wages arising from Defendant’s
10 failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole*
11 *Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that “health and safety concerns” are what
12 motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

13 The Action also conferred a significant benefit on a class of persons who worked for Defendant
14 during the Class Period and were, according to allegations, not properly compensated for all hours
15 worked and were not provided meal and rest periods or compensation therefor.

16 Finally, the necessity and financial burden of private enforcement render an award appropriate.
17 Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to hire counsel to
18 pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s potential recovery. *See*
19 *Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001) (“As to the necessity
20 and financial burden of private enforcement, an award is appropriate where the cost of the legal victory
21 transcends the claimants’ personal interest; in other words, where the burden of pursuing the litigation is
22 out of proportion to the plaintiff’s individual stake in the matter.”).

23 c) *A Lodestar Cross Check Confirms that Class Counsel’s Requested*
24 *Attorneys’ Fees Are Reasonable*

25 Plaintiff’s fee application is also reasonable based on Class Counsel’s lodestar. Under the
26 lodestar method, the court considers a compilation of the time spent and a reasonable hourly
27 compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v.*
28 *Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in

1 this regard by submitting “declarations evidencing the reasonable hourly rate for their services and
2 establishing the number of hours spent working on the case” as “California case law permits fee awards
3 in the absence of detailed time sheets.” *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at
4 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and
5 the reasonable hourly compensation are computed to arrive at a “lodestar” figure which may then be
6 augmented or diminished by the court taking into account various “multiplier” factors. *See Ramos*, 82
7 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

8 Here, Class Counsel’s billed lodestar exceeds \$131,223.50 which is based on approximately
9 **137.8 billed** hours (not including final estimated hours) at the attorneys’ customary hourly rates (and
10 omitting about 10 hours of time that were not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The actual
11 lodestar is estimated to exceed **\$98,418.00**. (Leviant Decl., ¶ 32.) Application of a positive multiplier is
12 appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions
13 involved, the benefit conferred on the class as a result of the Settlement, and the skill displayed by Class
14 Counsel. Thus, Class Counsel’s request for **\$150,000.00** in attorneys’ fees, which is just **1.82** times the
15 final *billed* lodestar and **1.52** times the estimated final lodestar, is reasonable under the lodestar method.

16 (1) Class Counsel’s Hours Are Reasonable

17 In determining whether the number of hours expended on the litigation was reasonable, the court
18 must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith
19 effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.’”
20 *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court “should defer to the
21 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
22 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that “[l]awyers are not likely
23 to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too
24 uncertain, as to both the result and the amount of the fee.”).

25 Here, Class Counsel expended a prudent amount of time litigating the case to achieve the
26 excellent result on behalf of the class. (Leviant Decl. ¶ 32.)

27 (2) Class Counsel’s Hourly Rates Are Reasonable

28 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group*,

1 *Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is
2 allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
3 reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial
4 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”
5 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

6 Class Counsel are experienced litigators who specialize in employment law, with a substantial
7 wage and hour class action practice. (Leviant Decl. ¶¶ 21-27.) A number of courts, including this Court,
8 have approved Class Counsel’s hourly rates. (Leviant Decl. ¶ 27.) Given the skill and experience of
9 Class Counsel, and the excellent result achieved, Class Counsel’s hourly rates are reasonable.

10 (3) Application of a Positive Multiplier Would Be Appropriate

11 The lodestar may be adjusted by applying a multiplier. *See Serrano*, 20 Cal. 3d at 49. In
12 California, “[m]ultipliers can range from *two to four or even higher*” and are routinely applied in the
13 range requested by Class Counsel. *Wershba*, 91 Cal. App. 4th at 254; *see also Chavez*, 162 Cal. App.
14 4th at 66 (upholding **2.5 multiplier**); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal.
15 App. 3d 465 (1984) (affirming a fee award that included a **12.0 multiplier**); Some factors a trial court
16 considers when determining whether to apply a multiplier are: “(1) the novelty and difficulty of the
17 questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the
18 litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.” *See*
19 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citations omitted). The ultimate goal is “to entice
20 competent counsel to undertake difficult public interest cases.” *San Bernardino Valley Audubon Soc. v.*
21 *County of San Bernardino*, 155 Cal. App. 3d 738, 755 (1985). Fee awards that are too small “chill the
22 private enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*,
23 82 Cal. App. 4th 19, 53 (2000).

24 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is
25 necessary to (1) fully compensate counsel for the “loan” of legal services in light of the inherent high risk
26 of “default” posed by losing the case, and (2) encourage competent counsel to take on fee award cases.
27 *Ketchum*, 24 Cal. 4th at 1132-1133. As the court noted, “A lawyer who both bears the risk of not being
28 paid and provides legal services is not receiving the fair market value of his work if he is paid only for

the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted). Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of settlement, and the skill displayed by Class Counsel. Here, a modest multiplier of **1.52** is required to align the final estimated lodestar with the requested fee. Class Counsel will have been litigating this case for over two years before receiving any reimbursement, expending resources which could have been directed elsewhere. Class Counsel agreed to litigate on a contingent basis, and in the process assumed considerable risk. (Leviant Decl. ¶ 28.)

Class Counsel’s efficiency and skill in bringing the case to an early resolution should not be used to justify refusal to award the requested fees. As the court explained in *Lealao*:

[T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology. Considering that our Supreme Court has placed an extraordinarily high value on settlement ... it would seem counsel should be rewarded, not punished, for helping to achieve that goal....

Lealao, 82 Cal. App. 4th at 52 (citations omitted).

Given the contingent risk incurred by Class Counsel, the issues involved, the substantial benefit conferred on the class and State as a result of the Settlement, and the skill displayed by Class Counsel, application of a modest positive multiplier would be appropriate. Thus, Plaintiff respectfully requests that the Court award Class Counsel the requested fees of **\$150,000.00** under the common fund theory with a lodestar cross-check or, alternatively, based on Class Counsel’s lodestar with application of a modest multiplier based upon the agreed-upon cap on fees.

d) Class Counsel’s Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed **\$15,000.00**. To date, Moon & Yang, APC has already incurred actual costs in the amount of \$10,814.25. These costs *do not* include future motion filing charges not entered at the time the report was prepared, attorney service costs, and CourtCall fees to appear for the hearing of this Motion. (Leviant Decl. ¶ 32.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of **\$11,028.25**.

1 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

2 In deciding whether to approve a proposed settlement, a trial court must determine if the
3 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
4 exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,
5 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Settlement
6 Administrators, which has been selected due to its competitive bid, estimates that administration can be
7 performed for **\$8,000.00**. In counsel’s experience, based on similar wage-and-hour actions, an estimated
8 cost of **\$8,000.00** is a fair and reasonable amount for administration fees and should be preliminarily
9 approved. (Leviant Decl., ¶ 34.)

10 **8. The PAGA Allocation is Reasonable**

11 “In determining whether the proposed settlement falls within the range of reasonableness,
12 perhaps the most important factor to consider is plaintiffs’ expected recovery balanced against the value
13 of the settlement offer.” *Cotter v. Lyft, Inc.*, 176 5 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (internal
14 quotation omitted). Significantly, the ultimate decision as to the amount of penalties is always up to the
15 discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee
16 seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser
17 amount than the maximum civil penalty amount specified by this part if, based on the facts and
18 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
19 oppressive, or confiscatory.”

20 The PAGA allocation is reasonable because the settlement of the underlying wage and hour
21 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies,*
22 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
23 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
24 members as employees, but may have a deterrent effect upon the defendant employer and other
25 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
26 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
27 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
28 because the non PAGA settlement is relatively substantial.”)

1 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
2 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
3 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
4 held that employers are not subject to heightened penalties for subsequent violations until and unless a
5 court or commissioner notified the employer that it is in violation of the Labor Code.”) And in *Cotter*,
6 the court found a significant reduction of the PAGA claim would be appropriate because “[t]his does not
7 appear to be a case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d
8 at 941. Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, its efforts to
9 devise compliant operational policies do not indicate an organization that has deliberately sought to
10 evade the law. This is a very significant risk factor.

11 To assess the fairness, adequacy, and reasonableness of a class action settlement, the court should
12 also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at
13 1801. Here, the expense, complexity and likely duration of future litigation was to some extent an
14 unknown. However, what is certain is that to adequately establish the foundational violations that would
15 support a substantial penalty award, tremendous time and expense would be invested. To adequately
16 establish that aggrieved employees experience the alleged violations, and at what frequency, most of the
17 aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged
18 in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey.
19 *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, the
20 individuals already interviewed confirmed substantial risk that the Court would either substantially
21 reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient to support a penalty
22 award. *Third*, it would be essentially impossible to formulate an objectively reliable means of
23 summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating
24 such a survey would have been important, since frequency of violations would need to be established
25 before any penalties could be recovered. At least as to claims such as meal period and rest break
26 violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum, the
27 evidence collected to date leads Plaintiff to conclude that, to the extent violations occurred, a fact which
28 Defendant disputes, the violations were **not** systematic and **not** uniform across all of Defendant’s

1 estimated **133** employees who worked during the PAGA period. Alternatively, direct testimony would
2 have been required from as many of the **133** aggrieved employees as could be obtained, which would be,
3 at best, very difficult. Proof of this sort gives rise to a manageability argument that could substantially
4 reduce the size of the aggrieved employee group.

5 Finally, the PAGA allocation is fair. The LWDA is receiving **\$45,000**. The Class is receiving,
6 net, an estimated \$224,500 for the releases for eight theories of recovery (including the \$15,000 as the
7 aggrieved employees' share of the PAGA Allocation). The proportion is tipped slightly in favor of the
8 Class Members, but not markedly so. An allocation to the LWDA equal to 26.7% of the Net Settlement
9 Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

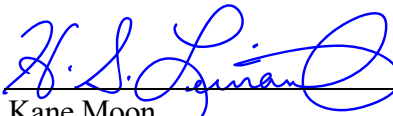
10 **VII. CONCLUSION**

11 For all the foregoing reasons, because the Class meets the requirements for certification, because
12 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
13 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
14 this Motion for Final Approval and enter Judgment thereon.

15 Respectfully submitted,

16 Dated: May 31, 2022

MOON & YANG, APC

17
18 By: 
Kane Moon
H. Scott Leviant
Mariam Ghazaryan

19
20 Attorneys for Plaintiff Manuel Godoy

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF**
6 **MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in
8 this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as
9 stated on the attached service list:

10 Kenneth J. Rose
11 Robert H. Rose
12 THE ROSE GROUP, APLC
13 9747 Businesspark Ave., Suite 213
14 San Diego, CA 92131
15 krose@rosegroup.us
16 rrose@rosegroup.us

17 *Counsel for Defendant Intertrade Industries, LTD*

18 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
19 the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's
20 practice of collection and processing correspondence for mailing. Under that practice, sealed
21 envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business
22 with postage thereon fully prepaid at Los Angeles, California.

23 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
24 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in
25 this action.

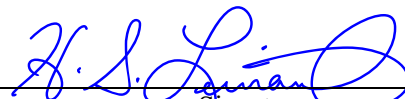
26 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the
27 above-named document(s) has (have) been electronically served on counsel of record by an approved
28 electronic service provider. The transmission of these documents was reported complete and a copy of
the service confirmation will be maintained, along with the original document(s) and proof of service
in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct. Executed this **May 31 19, 2022** at Los Angeles, California.

26 H. Scott Leviant
27 Type or Print Name

26 
27 Signature