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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN MATEO
10

11 LEONARDO ALDAPE, on behalf of himself
and all others similarly situated,

12 *Plaintiff,*

13 vs.
14

15 CEVA LOGISTICS U.S., INC., a Delaware
corporation; CEVA FREIGHT, LLC, a
Delaware corporation; CEVA FREIGHT
16 MANAGEMENT INTERNATIONAL
GROUP, INC., a Delaware corporation; and
17 DOES 1 through 50, inclusive,

18 *Defendants.*

Case No. 20-CIV-04865

[Assigned for All Purposes to the Danny Y. Chou,
Department 22]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with Declaration of Shaun
Setareh in support thereof; [Proposed] Order]*

Date: May 5, 2022
Time: 11:00 a.m.
Place: Department 22

Complaint Filed: November 6, 2020

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

2 PLEASE TAKE NOTICE that on May 5, 2022 at 11:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 22 of the above-entitled Court located at 800 North Humboldt Street, San
4 Mateo, CA 94401, Plaintiff LEONARDO ALDAPE (“Plaintiff”) will and does hereby move this Court
5 for an Order:

- 6 • Preliminarily approving the proposed Joint Stipulation of Class Action Settlement;
- 7 • Certifying the Settlement Class;
- 8 • Appointing Plaintiff as the Class Representative;
- 9 • Appointing Shaun Setareh and David Keledjian of Setareh Law Group as Class Counsel;
- 10 • Appointing Simpluris, Inc. as the Settlement Administrator;
- 11 • Directing that notice be mailed to the Settlement Class; and
- 12 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

13 This motion is made pursuant to California Rules of Court 3.769. This motion will be based
14 upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
15 Declaration of Shaun Setareh as well as exhibits attached thereto, the arguments of counsel, the
16 documents filed in this action and any other matters as may be properly presented on or before the
17 hearing on this motion.

18
19 DATED: April 5, 2022

SETAREH LAW GROUP

20
21 /s/ Shaun Setareh
22 SHAUN SETAREH
23 DAVID KELEDJIAN
24 Attorneys for Plaintiff
25 LEONARDO ALDAPE
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff LEONARDO ALDAPE (“Plaintiff”) seeks preliminary approval of a non-reversionary
4 class and representative action settlement of wage and hour and PAGA penalty claims against Defendants
5 AMLI MANAGEMENT COMPANY (“AMLI Management”), CEVA LOGISTICS U.S., INC., CEVA
6 FREIGHT, LLC, CEVA FREIGHT MANAGEMENT INTERNATIONAL GROUP, INC (collectively,
7 “Defendants”)¹ for a Gross Settlement Amount (“GSA”) of **\$3,850,000.00**. The Settlement Class consists
8 of approximately 4,678 Class Members who have worked approximately 104,000 workweeks.

9 The Net Settlement Amount (“NSA”) expected to be paid to Class Members—after payment of
10 Class Counsel fees of one-third (1/3) of the GSA (\$1,283,333.33) and costs of up to \$20,000, settlement
11 administration costs of up to \$10,000, Plaintiff’s enhancement award of \$5,000, and a payment to the
12 California Labor & Workforce Development Agency (“LWDA”) pursuant to the Private Attorneys
13 General Act of 2004 (“PAGA”) of \$ 75,000.00 (75% of the total PAGA Settlement Amount of \$100,000,
14 which includes the 25% portion of the PAGA Settlement Amount, or \$25,000, that will be paid to PAGA
15 Employees employed during the PAGA period), with an average individual settlement payment to each
16 Class Member of approximately **\$823**. Plaintiff has obtained a significant monetary recovery for Class
17 Members.

18 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced counsel
19 after sufficient formal and informal written discovery and investigation into the facts with guidance from
20 Tripper Ortman, Esq., an experienced and well-respected class action mediator. The Settlement seeks to
21 fully and finally settle and resolve all claims that were pled or could have been pled based on the allegations
22 of this Action, individually and on behalf of all current and former non-exempt employees of Defendants
23 in the State of California during the period of November 6, 2016 through September 24, 2021. The
24 Settlement will result in financial benefit to the class members on terms that are fair, reasonable, and
25 adequate.

26
27 ¹ The Parties executed a Joint Stipulation of Class Action and PAGA Settlement (“Settlement”), attached
28 as **Exhibit 1** to the Declaration of Shaun Setareh filed concurrently herewith.

Based upon their evaluation, Plaintiff and his counsel, Shaun Setareh and David Keledjian of the Setareh Law Group, have determined that the Settlement is fair, reasonable, adequate and in the best interest of the Class, and they request that this Court grant preliminary approval of the Settlement.

II. THE MAJOR TERMS OF SETTLEMENT

Key provisions of the proposed settlement include the following:

- Defendants stipulate to certification of a Settlement Class for purposes of settlement only.
- Defendants will pay a maximum of **\$3,850,000**, referred to as the GSA.
- Defendants will not oppose Class Counsel's application for fees of 1/3 of the GSA (**\$1,283,333.33**) and costs not to exceed **\$20,000**, to be paid out of the GSA.
- The notice portion of the Settlement will be administered by Simpluris, Inc. ("Simpluris"), whose costs are not expected not to exceed **\$10,000**;
- Out of the GSA, **\$100,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$75,000**, to be paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$25,000**, to be paid to PAGA Employees – i.e., Class Members employed at any time during the PAGA Period.
- Defendants will not oppose the application for Class Representative Service Award in the amount of **\$5,000** to Plaintiff, to be paid out of the GSA.
- After deducting Class Counsel's attorneys' fees and costs, enhancement payment to Plaintiff, settlement administration costs, the payment to the LWDA, and payroll taxes, the remainder – i.e., the NSA – is calculated to be at least **\$2,456,666.67**. Each Participating Class Member will receive a *pro rata* share based upon the number of weeks worked during the Class Period and/or the number of pay periods worked during the PAGA Period.
- Settlement Class Members will be mailed a check so long as they do not opt out.
- The Settlement will release specified wage-and-hour claims for those Settlement Class Members who do not opt out of the Settlement.
- The Settlement will release specified PAGA claims for all Class Members who were employed with Defendants during the PAGA Period. Such Class Members cannot opt out of the PAGA portion of the Settlement and will be mailed their share of the PAGA Payment even if they opt out of the rest of the Settlement.

- Any checks issued by the Settlement Administrator to Participating Class Members shall be negotiable for not less than 120 calendar days after mailing. Those checks remaining uncashed for more than 180 days after issuance will be reissued and sent to the Controller of the State of California, in the name of that Class Member, to be held pursuant to the Unclaimed Property Law for the benefit of the Class Member until such time as they claim their property, as allowed by law, or to a *cy pres* designee subject to Court approval.

(Declaration of Shaun Setareh (“Setareh Decl.”), ¶ 12, Ex. 1 (“Settlement”).)

III. STATEMENT OF FACTS

A. THE ALLEGATIONS OF THIS SUIT

Defendants are a logistics company. (Setareh Decl., ¶ 18.) Defendants employ individuals in a variety of different positions to perform various functions necessary to operate and maintain shipping of goods. (*Id.*) Plaintiff worked for Defendants as a non-exempt, hourly employee during the class period. (*Id.*) Defendants also utilizes the services of individuals employed by third party staffing agencies Staffmark Holdings, Inc. and Randstad Inhouse Services, LLC. (*Id.*)

Plaintiff alleges Defendants failed to provide him and putative class members with: meal and rest periods; wages and overtime; vested wages, including vacation wages, upon separation of employment; reimbursements for necessary expenditures; and accurate itemized wage statements. (See Complaint, *passim*, on file herein.)

Specifically, Plaintiff alleges that he and class members were required to undergo mandatory off-the-clock work including waiting in security checks and communicating with supervisors while off the clock. (Complaint, ¶¶ 24-28, 61-64.) This uncompensated time caused the accrual of minimum and overtime wages, which class members were never paid. The uncompensated security-check time also resulting in shortened and interrupted meal periods, and delayed class members’ opportunity to take timely meal and rest breaks. (Complaint, ¶¶ 34-54.)

Plaintiff also alleges that he and class members accrued vested vacation wages during their employment with Defendants. (Complaint, ¶¶ 55-58.) However, Plaintiff alleges that these vested vacation wages were never paid to class members upon separation of their employment.

Next, Plaintiff alleges that he and class members were required to incur necessary business

1 expenditures in executing their duties under Defendant’s employ. (Complaint, ¶¶61-64.) Specifically,
2 Plaintiff and class members had to purchase safety blades or box cutters, protective eyewear, and face masks
3 (before COVID). (*Id.*) Class members were also required to use their personal cell phone to communicate with
4 supervisors during working hours, answers work emails, etc. (*Id.*) Plaintiff and class members were never
5 reimbursed for these work-related expenditures.

6 Next, this Action also alleges various derivative claims under Labor Code §§ 201, 202, 203, and
7 226, as well as unfair competition law, based on the forgoing allegations.

8 **B. PROCEDURAL HISTORY**

9 On October 14, 2020, Plaintiff uploaded his letter to the LWDA detailing the allegations above,
10 and to exhaust his administrative remedies under the PAGA.² On November 6, 2020, Plaintiff filed a
11 putative class action complaint against Defendants in the Superior Court of the State of California, County
12 of San Mateo (the “Complaint”). (See Complaint, on file herein.) Plaintiff’s Complaint alleged eight
13 causes of action for violations of California’s meal and rest period, wage payment, wage statement,
14 vacation wages, reimbursement, and unfair competition laws. (*Id.*)

15 On December 9, 2020, the case was removed to the United States District Court for the Northern
16 District of California (Case #: 3:20-cv-08713-VC). (Setareh Decl., ¶7.)

17 The Parties agreed to mediate Plaintiff’s alleged wage and hour and PAGA claims and selected
18 Tripper Ortman, Esq., to serve as mediator. (Settlement, ¶D.) On September 10, 2021, the Parties attended
19 mediation with Mr. Ortman and were able to reach an agreement shortly thereafter on a class-wide basis.
20 (*Id.*) As part of that agreement, the Parties stipulated to remand the case back to this Court. (Setareh Decl.,
21 ¶ 7.) On September 14, 2021, this case was remanded. (Setareh Decl., ¶ 7.)

22 **C. INVESTIGATION AND DISCOVERY**

23 The Parties agreed to attend mediation to attempt to resolve the action entirely and further agreed
24 to engage in informal discovery in advance and in preparation thereof, in addition to conducting formal
25 discovery in advance of the mediation. (Setareh Decl., ¶ 6.) Defendants produced volumes of time punch
26

27
28 ² Private Attorney General Act, Cal Labor Code §§ 2699, *et seq.*, (“PAGA”).

1 data for class members. (*Id.*) Plaintiff hired an expert to hire analyze the produced data with respect to
2 potential damages and penalties in preparation for mediation. (*Id.*)

3 **D. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

4 On September 10, 2021, the Parties participated in a full-day mediation before experienced
5 mediator Tripper Ortman. (Settlement, ¶ D.) During the mediation, the Parties had a full day of productive
6 negotiations and were able to reach an agreement on a class-wide settlement shortly after as a result of the
7 arm’s length negotiations. (*Id.*) During the mediation, each of the Parties, represented by its respective
8 counsel, recognized the risk of an adverse result in the Action. (*Id.*) As such, the Parties agreed to settle
9 the Action and resolve all claims alleged against Defendants in Plaintiff’s in this Action to the fullest extent
10 permitted by law and without any admission of liability or wrongdoing by Defendants. (*Id.*)

11 **E. REASONABLENESS OF THE SETTLEMENT**

12 Plaintiff’s counsel believe that the Settlement is in the best interest of the class members based on
13 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
14 extensive settlement negotiations. (Setareh Decl., ¶¶ 4-9.) Plaintiff’s counsel balanced the Settlement
15 against the probable outcome of class certification, liability, the range of recovery at trial, the risks of losing
16 class certification, losing at trial, or not recovering as much as provided by the proposed Settlement, as
17 well as the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and
18 the various possible delays and appeals. (*Id.*) Although Defendants contend they have no liability in this
19 case, Defendants’ counsel share Plaintiff’s counsel’s belief that the Agreement represents a fair, reasonable
20 and adequate settlement given the respective risks associated with the Action. (Settlement, ¶ E-F.)

21 **IV. DESCRIPTION OF THE SETTLEMENT**

22 **A. CONTINGENT NATURE OF THE SETTLEMENT**

23 In the event that the Settlement does not become final for any reason, then this Agreement, and
24 any documents generated to bring it into effect, shall be null and void. (Settlement, ¶ 42.)

25 **B. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

26 The Parties have stipulated to the appointment of Shaun Setareh and David Keledjian of Setareh
27 Law Group as Settlement Class Counsel (“Class Counsel”). (*Id.*, ¶ 10.)

28 **C. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

1 The Parties have agreed to the appointment of Simpluris to administer the Settlement and to
2 provide notice to the Class Members (the “Settlement Administrator” or “Claims Administrator”).
3 (Setareh Decl., ¶ 12.) Plaintiff estimates that settlement administration costs shall not exceed **\$10,000**.
4 (Settlement, ¶19(D).) The Settlement Administrator’s cost reasonable for a settlement with a class of this
5 size. (Setareh Decl., ¶16)

6 **D. DESCRIPTION OF THE SETTLEMENT CLASS**

7 “Class” or “Class Member(s)” means “ (1) all non-exempt employees of Defendants CEVA
8 Logistics, U.S., Inc. CEVA Freight, LLC, and CEVA Freight Management International Group, Inc.
9 (collectively "Defendants") employed in the state of California between the period of February 1, 2020 to
10 September 24, 2021; (2) all non-exempt employees of third party staffing agency Staffmark Holdings, Inc.
11 and/or its related corporate entities including Staffmark Investments, LLC ("Staffmark"), who performed
12 work for Defendants in California between the period of November 28, 2017 to September 24, 2021; and
13 (3) all additional non-exempt employees of third party staffing agencies, including but not limited to
14 Randstad Inhouse Services, LLC and/or its related corporate entities ("Randstad"), who performed work
15 for Defendants in California between the period of November 6, 2016 to September 24, 2021.”
16 (Settlement, ¶ 5.)

17 It has been determined that there are approximately 4,678 individuals that comprise the Class who
18 have worked a total of approximately 104,000 workweeks during the Class Period.(*Id.*, ¶ 23.) The “PAGA
19 Period” is November 6, 2019 through September 24, 2021. (*Id.*, ¶ 8.) “Participating Class Members”
20 means all Class Members who do not submit a valid and timely Request for Exclusion. (*Id.*, ¶ 6) There
21 will be no right for any Class Members who were employed during the PAGA Period to opt out of the
22 PAGA portion of the Settlement. (*Id.*, ¶¶ 19(E) and 25.)

23 **E. SCOPE OF THE RELEASE**

24 “Released Parties” means Defendants and each of their past and current parents, subsidiaries,
25 affiliates, trusts, trust funds, investors and related entities or companies, and each of its and their respective
26 owners, partners, members, shareholders, officers, directors, employees, agents, managing agents,
27 attorneys, representatives, fiduciaries, trustees, insurers and other service providers, and their respective
28

1 predecessors, successors, and assigns, as well as Staffmark Holdings, Inc. and/or its related corporate
2 entities including Staffmark Investments, LLC and/or Randstad Inhouse Services, LLC and/or its related
3 corporate entities to the extent that any of the released claims as to Defendants would apply to Staffmark
4 Holdings, Inc. and/or its related corporate entities including Staffmark Investments, LLC and/or Randstad
5 Inhouse Services, LLC and/or its related corporate entities.” (*Id.*, ¶24.)

6 Release of Claims by Participating Class Members. Upon the Effective Date, for and in
7 consideration of the mutual promises, terms and conditions by and between the Participating Class
8 Members and Defendants set forth herein, the sufficiency of which consideration is expressly
9 acknowledged, the Participating Class Members do hereby fully, finally and forever release and discharge
10 the Released Parties from any and all Released Claims. (*Id.*, ¶ 24.) The Settlement, however, “expressly
11 excludes all other claims, including claims for vested benefits, wrongful termination, unemployment
12 insurance, disability, social security, workers' compensation, and class claims outside of the Class Period
13 and PAGA claims outside of the PAGA period.” (*Id.*).

14 “Released Claims” means all class claims alleged or which could have been alleged based on the
15 facts in the operative complaint which occurred during the Class Period, including but not limited to claims
16 for: (1) failure to provide meal periods pursuant to Labor Code §§ 204, 223, 226.7, 512, and 1198; (2)
17 failure to provide rest periods pursuant to Labor Code §§ 204, 223, 226.7, and 1198; (3) failure to pay
18 hourly and overtime wages pursuant to Labor Code §§ 204, 218.6, 223, 510, 1194, 1194.2, 1197, and
19 1198; (4) failure to pay vacation wages pursuant to Labor Code § 227.3; (5) failure to indemnify expenses
20 pursuant to Labor Code §§ 452, 2802; (6) failure to provide accurate wages statements pursuant to Labor
21 Code §§ 226; (7) failure to timely pay final wages pursuant to Labor Code §§ 201-203; and (7) claims for
22 recovery under Business and Professions Code §§ 17200 *et seq.*” (*Id.*, ¶24.)

23 “PAGA Released Claims” means all claims arising during the PAGA Period seeking civil
24 penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.*, that
25 Plaintiff in his capacity as proxy for the State of California and/or the LWDA, to the maximum extent
26 permitted by law, and as a private attorney general acting on behalf of himself and the PAGA
27 Employees, asserted or could reasonably have asserted based on the facts alleged in the Action and/or
28 the LWDA letter, including but not limited to all such claims arising under the California Labor Code

(including, but not limited to, sections 200, 201, 202, 203, 204, 210, 212, 215, 216, 218.6, 223, 225, 226, 226.6, 226.7, 227.3, 354, 408, 510, 512, 553, 558, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2698 and 2699, *et seq.*, as alleged in the Complaint) and the wage orders of the California Industrial Welfare Commission and any other Labor Code section or Wage Order based the facts alleged in the Action.

General Release of Claims by Plaintiff. Upon the Effective Date, Plaintiff will be deemed to have forever discharged and released the Released Parties from any and all claims, known and unknown, asserted or unasserted, which he has or may have against the Released Parties, including, but not limited to, all Released Claims released by the Participating Class Members, as well as any claim arising out of “contract, tort, public policy, wrongful termination, intentional infliction of emotional distress, fraud, defamation, invasion of privacy or any other common law claims, and any and all claims based on any federal, state or local law, statute, regulation or ordinance, including, but not limited to, claims arising under, as amended, the Americans With Disabilities Act, the Equal Pay Act, the Employee Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act, the California Family Rights Act, the California Fair Employment and Housing Act, and any similar federal, state or local law, statute, regulation or ordinance relating to employment, discrimination, harassment, retaliation, whistleblowing, protected leaves of absence, reasonable accommodation and/or any other rights afforded to employees on any other basis protected by law,” with the exception of any claims arising under the Fair Credit Reporting Act, which remain preserved. (*Id.*, ¶¶ 24-27.)

F. SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT MONIES

The Settlement provides for a GSA of **\$3,850,000**, which represents the maximum amount payable in this Settlement by Defendants, and which includes Individual Settlement Payments to Participating Class Members, the Class Representative Enhancement Payment to Plaintiff, Settlement Administration Costs to the Claims Administrator, the PAGA Payment (including LWDA payment), interest, and Class Counsel’s Fee and Expense Payments. (*Id.*, ¶¶ 18 and 19(A)-(B).) This is a non-reversionary settlement and none of the GSA shall revert to Defendants, with the funds of checks uncashed by Class Members

after 180 days of their mailing being directed to the California State Controller's Unclaimed Property Fund or to a *cy pres* designee subject to Court approval. (*Id.*, ¶¶ 18, and 53.)

G. CLASS MEMBER SETTLEMENT PAYMENT FORMULA

The Parties have agreed to a settlement formula which allocates settlement amounts to Class Members on a *pro rata* basis, based on their number of workweeks and pay periods during the Class Period and PAGA Time Period, respectively. (*Id.*, ¶ 20.) The Settlement Share Payments – the individual amount paid to a Participating Class Member from the NSA – is allocated 30% to wages (for which employment taxes will be deducted and IRS Forms W-2 issued) 35% as interest; and 35% as civil and statutory penalties (for which IRS Forms 1099 will be issued). (*Id.*, ¶20(A).) The amount paid to aggrieved employees from the \$25,000.00 PAGA portion of the NSA – will be allocated 100% to penalties (for which IRS Forms 1099 will be issued). (*Id.*)

1. Calculation of the Individual Settlement Payment and the PAGA Payment to the Settlement and Aggrieved Employees

Within 45 calendar days of Preliminary Approval, Defendants shall provide the Class Members Data to the Claims Administrator, in which Defendants will diligently compile in good faith: full name; employee number; most recent mailing address; social security number; and the number of workweeks worked during the Class Period. (*Id.*, ¶¶ 33(A)-(B).)

(a) PAGA Settlement Amount, Payment to the LWDA, PAGA Shares

The Parties agree to allocate **\$100,000** of the GSA for settlement of claims for civil penalties under PAGA, Labor Code § 2699, *et seq.* (the “PAGA Payment”) (*Id.*, ¶19(E).) Pursuant to Labor Code section 2699(i), 75% of that amount (**\$75,000**) will be paid to the LWDA. (*Id.*) The remaining 25% (**\$25,000**) will be distributed to PAGA Employees on a *pro rata* basis according to the number of pay periods they worked during the PAGA Time Period. (*Id.*, ¶ 20.)

(b) Settlement Shares to the Participating Class Members

The Net Settlement Amount shall be used to satisfy Individual Settlement Payments to Participating Class Members from the Settlement Class in accordance with the terms of this Agreement. (*Id.*, ¶19.) The Claims Administrator will allocate the Individual Settlement Payments by paying Participating Class Members a *pro rata* share of the Net Settlement Amount based on their *pro rata* share

1 of class workweeks. (*Id.*, ¶20.)

2 The GSA was calculated with, and is premised on, approximately 4,678 Class Members eligible
3 to participate in the Settlement, and approximately 104,000 workweeks worked by Class Members during
4 the Class Period. (*Id.*, ¶ 23.) If the number of workweeks worked by Class Members during the Class
5 Period increases by 10% or more, the GSA shall be proportionally increased by the amount in excess of
6 10% (e.g. if the actual workweeks worked by Class Members were 15% greater than 104,000 workweeks,
7 the Gross Settlement Amount will increase by 5%). (*Id.*)

8 **H. NOTICE TO CLASS MEMBERS OF SETTLEMENT**

9 The proposed Notice of Class Action Settlement (“Class Notice” or “Notice Packet”) (attached as
10 **Exhibit 1** to the Settlement) provides Class Members with all required information so that each member
11 may make an informed decision regarding his or her participation in the Settlement. (Settlement, ¶34.)
12 The Class Notice provides information regarding the nature of the lawsuit, a summary of the substance of
13 the settlement terms, the class definition, the deadlines by which Class Members must request exclusion
14 or submit objections, the date for the final approval hearing, the formula used to calculate settlement
15 payments, a statement that the Court has preliminarily approved the Settlement, and a statement that the
16 Class Members will release the settled claims unless they opt out. The Class Notice will include an
17 individualized computation of the approximate amount of the individual settlement award that the
18 particular Class Member will receive from the settlement proceeds and how that amount was calculated.

19 Within 45 calendar days of Preliminary Approval, Defendants shall provide the Class Members’
20 Data to the Claims Administrator. (*Id.*, ¶ 33.) The Class Members’ Data shall include each Class
21 Member’s: full name; employee number; most recent mailing address; social security number; and the
22 number of workweeks worked during the Class Period. (*Id.*, ¶ 33(A).) Within 15 business days after
23 receiving the Class Members’ Data from Defendants, the Claims Administrator shall mail a Notice Packet
24 to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
25 identified in the Class Members’ Data. (*Id.*, ¶ 34(A).)

26 All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (1)
27 information regarding the nature of the Action; (2) a summary of the Settlement’s principal terms; (3) the
28 Class definition; (4) each Class Member’s estimated Individual Settlement Payment and the formula for

1 calculating Individual Settlement Payments, if they do not request to be excluded; (5) the dates that
2 comprise the Class Period; (6) instructions on how to submit valid Requests for Exclusion or objections;
3 (7) the deadlines by which the Class Member must submit a Request for Exclusion or Notice of Objection
4 to the Settlement; (8) the date for the final approval hearing; and (9) the claims to be released. (*Id.*, Ex. 1
5 to the Settlement, Class Notice.) The Notice Packet will also inform Class Members that, in order to receive
6 the Individual Settlement Payment, they do not need to do anything except keep the Claims Administrator
7 apprised of their current mailing addresses. (*Id.*)

8 Any Notice Packets returned to the Claims Administrator as non-deliverable on or before the
9 Response Deadline shall be re-sent promptly via regular First-Class U.S. Mail to a more current address
10 upon the completion of a search for such address. (Settlement, ¶ 34(B).) If no forwarding address is
11 provided, the Claims Administrator shall promptly attempt to determine the correct address using a skip-
12 trace, or other search and shall then perform a re-mailing. (*Id.*)

13 **I. NOTICE AND PAGA PAYMENT TO THE LWDA**

14 The Settlement provides for a total amount of **\$100,000** in settlement of all claims for civil
15 penalties under PAGA. (*Id.*, ¶¶ 9 and 19(D)-(E).) Pursuant to Labor Code section 2699(i), 75% of the
16 PAGA settlement amount, or **\$75,000**, will be paid to the LWDA. (*Id.*) The remaining 25%, or **\$25,000**,
17 will be included in the NSA and distributed only to the Class Members who worked for Defendants during
18 the PAGA Period. (*Id.*) In connection with Settlement approval, Class Counsel must notify the LWDA
19 of the Settlement’s existence. (*Id.*, ¶24.) This settlement was forwarded to the LWDA by Class Counsel.
20 (Setareh Decl., ¶ 17, Ex 3.)

21 **V. ARGUMENT**

22 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT** 23 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS** 24 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF** **CIVIL PROCEDURE SECTION 382**

25 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
26 numerous and ascertainable class with a well-defined community of interest among its members” and a
27 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
28 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question

1 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*
2 at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification
3 question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable
4 to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In ruling on a
5 certification motion, a trial court’s task is to determine “whether...the issues which may be jointly tried,
6 when compared with those requiring separate adjudication, are so numerous or substantial that the
7 maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Id.*

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

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

24 As shown below, this Settlement and the Settlement Class easily meet all of the requirements for
25 certification for settlement purposes.

26 **1. Objectively Ascertainable and Sufficiently Numerous Class**

27 A class is ascertainable when it may be readily identified via an objectively stated definition
28 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126

1 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action. *Hebbard v.*
2 *Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a class of as few
3 as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here, the Settlement
4 Class is made up of about 4,678 individuals, all of whom may be readily, and have already been,
5 ascertained by reference to Defendants' personnel records. (Settlement, ¶23.) Accordingly, the Settlement
6 Class is not only ascertainable but also sufficiently numerous.

7 **2. Predominance of Common Questions**

8 A question of law or fact is common to the members of a class if it may be resolved through
9 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
10 concept, and 'the necessity for class members to individually establish eligibility and damages does not
11 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (*quoting Reyes v. San*
12 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not render
13 class certification inappropriate so long as such issues may effectively be managed." *Id.* This is especially
14 so where the key difference between class members solely concerns their respective amounts of damages.
15 *See id.* As a general rule, if a defendant's liability can be determined by facts common to all members, a
16 class will be certified even if the members must individually prove their damages. *See Hicks v. Kaufman*
17 *& Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

18 In this case, the Settlement Class meets these requirements. Plaintiff submits that Defendants'
19 liability arises from the same set of facts and legal questions that apply to and are answered equally as to
20 all Class Members. Plaintiff alleges Class Members were subjected to a common practice in that
21 Defendants: failed to pay them, *inter alia*, for missed meal and rest periods, including premiums
22 (Complaint, ¶¶70-95); failure to pay minimum and overtime wages owed (*Id.*, ¶¶ 96-118), and accrued
23 vacation wages upon separation of employment (*Id.*, ¶¶119-124); failed to reimburse employees for
24 necessary expenditures (*Id.*, ¶¶ 125-136); failed to provide compliant wage statements (*Id.*, ¶¶137-143);
25 and failed to pay all wages due upon separation of employment (*Id.*, ¶¶ 143-154).

26 The Court accordingly should certify the Settlement Class for purposes of settlement under Code
27 of Civil Procedure section 382 and Rule of Court 3.769(c).

28 ///

1 **3. Typicality of Plaintiff’s Claims**

2 Typicality “requires a showing that the class representative has claims or defenses typical of the
3 class.” *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
4 “the nature of the claim or defense of the class representative, and not to the specific facts from which it
5 arose or the relief sought.” *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
6 citations omitted). “The test of typicality ‘is whether other members have the same or similar injury,
7 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class
8 members have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp* (C.D. Cal.
9 1985) 108 F.R.D. 279, 282; accord *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“it has never been
10 the law in California that the class representative must have *identical* interest with the class members”).

11 Under these standards, Plaintiff’s claims are typical of those of the class members. Like Class
12 Members, Plaintiff was an hourly non-exempt employee of Defendants in California. (Setareh Decl., ¶
13 10.) Plaintiff alleges that he and the putative class members was not paid all overtime owed due to
14 Defendants’ common security check processes and non-discretionary and supplemental pay which was
15 allegedly never factored into class members effective regular overtime rates of pay; was not provided with
16 compliant meal and rest breaks; was not paid all wages, including accrued vacation wages upon separation
17 of employment; and did not receive accurate wage statements. (*Id.*) *See Classen, supra*, 145 Cal.App.3d
18 at 46 (representative plaintiffs need not have all claims or identical interests with class members; they need
19 only have claims that are “typical of the class”); *see also B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*
20 (1987) 191 Cal. App. 3d 1341, 1347 (representative plaintiffs need not suffer all of the exact same damages
21 as every class member). Accordingly, Plaintiff pursues claims typical of the class he seeks to represent.

22 **4. Adequacy of Plaintiff and Class Counsel to Represent the Class**

23 The adequacy requirement is met where the named plaintiffs are represented by counsel qualified
24 to conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the class’s interests.
25 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words, where the named
26 plaintiffs have adequate counsel, they may represent the entire class absent any disabling conflicts of
27 interest that might hinder the named plaintiffs’ ability to represent the class. *Id.*

28 In this case, Plaintiff has no conflict of interest with absent Settlement Class Members and has

1 agreed to place the class's interests above his own. (Setareh Decl., ¶ 10.) *See Global Minerals, supra*,
2 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended to uncover any
3 conflicts between the plaintiff and the class he or she seeks to represent). Plaintiff's counsel, Setareh Law
4 Group, is experienced in wage and hour class action litigation and has no conflicts of interest with absent
5 Class Members. (Setareh Decl., ¶¶ 3-5, and 10.) Thus, this Court should appoint Plaintiff as Class
6 Representative for the Settlement Class and appoint his counsel as Class Counsel.

7 **B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL**

8 Cases brought as class actions may only be settled upon court approval and then only after a
9 determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases*
10 (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider
11 factors, such as the strength of plaintiff's case, the risk, expense, complexity and likely duration of further
12 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
13 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and
14 the reaction of the class members to the proposed settlement. *In re Microsoft*, 135 Cal.App.4th at 723;
15 *Dunk*, 48 Cal.App.4th at 1800-01; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336.
16 "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining;
17 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
18 is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk, supra*, at 1802;
19 *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52.

20 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
21 California. A two-step process is required. First, the court preliminarily approves the settlement and the
22 class members are notified as directed by the court. Cal. Rule of Court 3.769(c)-(f). "The notice must
23 contain an explanation of the proposed settlement and the procedures for class members to follow in filing
24 written objections to it and in arranging to appear at the settlement hearing and state any objections to the
25 proposed settlement." Cal. Rule of Court 3.769(f). Second, the court conducts a final approval hearing to
26 inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If the court approves
27 the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the
28 judgment. Cal. Rule of Court 3.769(h).

1 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
2 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
3 (2009) 171 Cal. App. 4th 495, 505. When approving a settlement, “the court need not ‘reach any ultimate
4 conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the
5 very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation that induce
6 consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (quoting
7 *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625).³ The court’s inquiry must
8 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
9 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
10 whole, is fair, reasonable and adequate to all concerned. *Id.*

11 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
12 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS FAIR,**
13 **ADEQUATE, AND REASONABLE**

14 **1. A Substantial Portion the Claims in this Matter Were Already**
15 **Resolved by Two Prior Class Action Settlements**

16 In evaluating settlement, Plaintiff anticipated that Defendants would argue that the majority of
17 the claims of his suit would be barred by the doctrine of *res judicata*, by class action settlements
18 reached in two prior matters: 1) *Fronza v. Staffmark Holdings, Inc.*, N.D. Cal. Case No.: 3:15-cv-02315
19 (“*Fronza*” matter); and 2) *Bell v. CEVA Logistics, U.S., Inc.*, C.D. Cal. Case No.: 5:19-cv-00352
20 (“*Bell*” matter).

21 **(a) *Fronza v. Staffmark Holdings, Inc. et al.***

22 A copy of the approved Settlement in the *Fronza* matter is attached as **Exhibit 4** to the
23 concurrently filed Setareh Decl. (“*Fronza* Settlement”). The *Fronza* Settlement released overlapping
24 claims as to all individuals employed by Staffmark Holdings, Inc. at CEVA Freight, LLC, CEVA
25 _____

26 ³ The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
28 *American Sav. & Loan Ass’n* (1971) 5 Cal. 3d 864, 872. Thus, the Court may look to federal authorities
in ruling on this motion.

1 Logistics U.S., and/or any other location of CEVA, CEVA's parents or any CEVA-related
2 entity operating in California. (*Fronza* Settlement, ¶1.1(b)(4).)

3 Specifically, the released claims in the *Fronza* Settlement include:

4 any and all claims, rights, demands, liabilities, and causes of action of every
5 nature and description, known and unknown, in law or in equity, as alleged in
6 the Complaint and any Amended Complaint in this Litigation or at the mediations
7 conducted in this matter on January 4, 2017 and April 26, 2017, arising from or
8 related to the following claims against any and all of the CBS Defendants: (1)
9 Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure
10 to Pay Hourly Wages; (4) Failure to Provide Accurate Itemized Wage
11 Statements; (5) Failure to Pay Waiting Time Penalties and Wages; (6) Failure to
12 Pay Wages Without Discount

13 *Fronza* Settlement, ¶1.1(b)(32).

14 Additionally, the release period in the *Fronza* Settlement begins as early as **April 17, 2011**
15 extends through **November 27, 2017** (the date it was preliminarily approved by the Court). (*Fronza*
16 Settlement, ¶1.1(b)(12); *see also* Setareh Decl., **Ex 5**, Order Granting Preliminary Approval.)

17 **(b) *Bell v. CEVA Logistics, U.S., Inc.***

18 A copy of the approved Settlement in the *Bell* matter is attached as **Exhibit 6** to the
19 concurrently filed Setareh Decl. ("*Bell* Settlement"). The *Bell* matter involved similar overlapping
20 claims, pertaining to Defendants' California non-exempt employees.

21 The broadest operative putative class period of this suit begins on **November 6, 2016** (four
22 years prior to the filing of the Complaint, and over a year prior to the end of the earlier *Fronza*
23 Settlement, *supra*). However, the release period of the prior *Bell* Settlement extends from **November**
24 **15, 2014** (nearly two years prior to the period of this suit) through **January 31, 2020**. (Bell Settlement
25 ¶ 1.4.) Additionally, the claims released in the *Bell* Settlement subsume the claims of this suit. The
26 claims released in *Bell* are as follows:

27 any and all claims, rights, demands, penalties, interest, wages, compensation,
28 premium pay, guarantee, costs, expenses, attorney's fees, damages, charges,
complaints, causes of action, obligations, or liability of any and every kind,
contingent or accrued, between **November 15, 2014 and the date of Preliminary**
Approval of the Settlement, or January 31, 2020, whichever is earlier, that were
or could have been asserted in any version of the complaints filed in this Action
that are based on or arise out of the facts alleged in any version of the complaints
filed in this Action, including those for: **(1) failure to provide meal periods or**

1 meal period premium pay under the California Labor Code, Cal. Labor Code
2 Sections 226.7 and 512 and the applicable Wage Order; (2) failure to authorize
3 rest periods or rest period premium pay under the California Labor Code,
4 Cal. Labor Code Section 226.7 and the applicable Wage Order; (3) failure to
5 provide accurate and itemized wage statements or maintain records under the
6 California Labor Code, Cal. Labor Code Sections 226 and 1174 and the
7 applicable Wage Order; (4) failure to pay minimum wage or failure to pay
8 overtime under California Labor Code Sections 550- 552; (5) failure to timely
9 pay all wages owed upon termination of employment under California Labor
10 Code Sections 201-204; and (5) unfair competition or unfair business practices
11 under the California Unfair Competition Law and California Business and
12 Professions Code, Cal. Bus. & Prof. Code Sections 17200, et seq.

13 Bell Settlement, ¶ 6.1 [emphasis added]

14 As such, Plaintiff anticipated that the vast majority of the exposure of this suit would be barred
15 by *res judicata* in light of the prior and overlapping releases in both in and *Bell*, reducing Defendants'
16 liability substantially.

17 **2. Settlement Resulted from Serious, Informed, and Non-Collusive**
18 **Negotiations**

19 Despite the remaining viable period in light of the *Bell* Settlement, the Parties reached this
20 settlement only after they conducted extensive and protracted arm's-length negotiations through an
21 experienced and knowledgeable mediator, Tripper Ortman, Esq. (Setareh Decl., ¶¶ 6-7.) The Parties have
22 not engaged in any collusion or improper negotiations. (*Id.*) Plaintiff and Defendants do not have any
23 agreements regarding the proposed Settlement that are not reflected in the Settlement. (*Id.*)

24 **3. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
25 **Fairness of the Settlement**

26 As discussed above, Plaintiff's counsel engaged in extensive investigation and informal written
27 discovery that has allowed them to evaluate the merits of the Class Members' claims and Defendants'
28 defenses as well as the range of possible recoverable damages. (*Id.*, ¶¶ 6-9.) Based on Plaintiff's counsel's
investigation and discovery, Plaintiff and his counsel are of the opinion that this settlement is fair,
reasonable, adequate, and in the Class Members' best interest. (*Id.*) Plaintiff's counsel's investigation and
discovery is more than sufficient to warrant their and Plaintiff's decision to enter into the Settlement. (*Id.*)

Plaintiff and Defendants engaged extensively in informal and formal discovery prior to resolving

1 the Action. (*Id.*, ¶ 6.) Specifically, the Parties engaged in a formal exchange of written discovery requests
2 and responses and an informal, voluntary exchange of information in the context of privileged settlement
3 discussions to facilitate an early mediation. (*Id.*) Defendants produced a substantial amount of data and
4 documents. For example, Defendants produced Plaintiff's personnel file, information regarding the class
5 list and size, payroll records for the class containing thousands of data entries, and copies of its relevant
6 company written policies. (*Id.*) Plaintiff hired an expert to analyze the produced data with respect to
7 potential damages and penalties in preparation for mediation. (*Id.*) From the data and other documents
8 obtained from Defendants pertaining to the Class and Defendants' policies, Plaintiff's expert was able to
9 analyze the data sampling, and Plaintiff was then able to thoroughly assess the merits of each claim. (*Id.*)

10 As mentioned above, Plaintiff obtained substantial time and pay records for the putative class,
11 which allowed Plaintiff, and Plaintiff's expert to extrapolate various damage exposures based on the claims
12 at issue. (Setareh Decl., ¶ 6.) First, with respect to meal and rest breaks, Plaintiff argued that Defendants'
13 mandatory security check protocols interfered with class members' opportunity to take timely and
14 uninterrupted meal and rest breaks of 30 and 10 minutes, respectively.

15 Therefore, this raises a well-supported inference that Defendants' practice for their non-exempt
16 California hourly employees was to interfere with their mandated breaks, by the way of a security check.
17 in addition to the unpaid minimum and overtime wages accrued in having to undergo the mandatory
18 security checks, Plaintiff argued that class members were each entitled to meal and rest break premiums
19 derivatively.

20 **4. Plaintiff's Counsel Are Experienced Class Action and Employment**
21 **Attorneys and the Amount of Attorneys' Fees Sought Are Appropriate**

22 As detailed more completely in the declaration of Shaun Setareh, Plaintiff's counsel are
23 particularly experienced in employment law and wage and hour class actions. (Setareh Decl., ¶¶ 3-5.)

24 Plaintiff's counsel believe that the one-third of the GSA that they will seek in attorneys' fees are
25 appropriate in this matter. (*Id.*, ¶ 15.) The Court of Appeal has recognized that one factor supporting a
26 lodestar multiplier is comparison to the fees typically earned in contingency fee litigation where the
27 plaintiff's attorney is awarded fees based on a percentage of the award recovered for the client: "to ensure
28 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable

litigation.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court knows, contingency fees typically range from one-third to forty percent. Indeed, Setareh Law Group has been awarded one-third-common-fund attorneys’ fees in numerous class actions. (Setareh Decl., ¶ 15.)

Factors that courts consider in determining the multiplier include: “The quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” *Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489. “There is no hard and fast rule limiting [these]...numerous factors, and their evaluation is entrusted to a trial court’s sound discretion.” *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 901.

The Parties believe the proposed Settlement is fair, reasonable, and adequate in light of the complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable recovery for the Settlement Class. (Settlement, ¶ E.)

5. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff’s Case and the Risks and Costs of Further Litigation

California courts recognize that “‘the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.’” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150). The settlement need not provide one-hundred percent of the damages sought in order to be judged reasonable. *Wershba*, 91 Cal.App.4th at 250. “Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to a class settlement because ‘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 Lines Stewards v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

The following chart provides the estimated potential recovery on a class basis that Plaintiff believes he could reasonably achieve *if he were to prevail on all his causes of action*⁴:

⁴ Civil penalties are estimated and interest is not included in this analysis. This is proper because, first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and

Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on time/payroll data provided by Defendants) <u>Number of workweeks:</u> 104,000 <u>Average Hourly Rate:</u> \$19.02; Estimated Unpaid Hours (including overtime) Per Week: 0.5 <u>Estimated Number of Formerly Employed Class Members:</u> 1,415 <u>Avg. Unused Vacation Accrual for Formerly Employed Class Members:</u> 4 hours <u>Pay periods within PAGA period:</u> 58,072		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Unpaid Wages and Overtime	\$989,040.00	0.5 hours a week x 104,000 weeks \$19.02
Meal and Rest Period Premiums	\$1,979,080.00	1 meal/rest violation a week x 104,000 weeks x \$19.02
Vested Vacation Hours Unpaid at Termination	\$107,653.20	4 accrued vacation hours x \$19.02 x 1,415 separated Class Members
Sub-Total Unpaid Wages	\$3,075,773.20	
Labor Code § 203 Penalties	\$6,520,320	8 hours x \$19.02 x 30 days x 1,415 separated employee Class Members
Labor Code § 226 Penalties	\$4,056,000	1,014 class members during the 1-year period x statutory maximum of \$4,000]
TOTAL	\$13,652,093.20	
PAGA Penalties	\$5,807,200	
<i>Total if PAGA included</i>	<i>\$19,459,293.20</i>	

(Setareh Decl., ¶ 8.)

courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2000) 563 F.3d 948, 955; see also *Miller v. CEVA Logistics U.S.A., Inc.* (E.D. Cal. Feb. 19, 2015) 2015 WL 729638, at *7(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 Despite a total potential recovery of a little more than \$989,000 on his unpaid wages, non-penalty,
2 class claims, and a little more than \$1.1 million on all class claims, including statutory penalties, Plaintiff
3 recognizes the challenges he faces in certifying a class action and establishing liability on the wage and
4 hour claims. (*Id.*, ¶ 9.) Plaintiff estimates that his likelihood of prevailing on all his causes of action are
5 extremely low and thus his likelihood of recovering \$13 million or anything close to that amount on behalf
6 of a class is very unlikely. (*Id.*)

7 First, it is vital to note that the bulk of the class members, and their respective workweeks, are
8 associated with the staffing agencies/companies to be released. (*Id.*) Thus, it is likely that Defendant would
9 successfully argue that each staffing agency, and defendant, implemented separate and distinct wage and
10 hour policies and practices, creating a wealth of highly individualized inquiries, which would ultimately
11 defeat class certification. (*Id.*)

12 For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial on the
13 merits. (*Id.*) In addition to having to prove that Plaintiff and other workers were not paid for all hours
14 worked, Plaintiff must establish willfulness with respect to his waiting time penalties claim under Labor
15 Code Section 203. (*Id.*)

16 With respect to the claims asserted on behalf of the Settlement Class in this case, there are
17 significant risks that support the reduced compromise amount. These risks include, but are not limited to,
18 the following:

19 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid overtime
20 wages. *See Duran v. US Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 (“*Duran*”), citing *Dilts v.*
21 *Penske Logistics* (S.D. Cal. 2014) *LLC* 2014 WL 205039 (dismissing certified off-the-clock claims based
22 on proof at trial). Defendants contend, e.g., that overtime was properly paid or not due or owing across
23 the putative Class as alleged by Plaintiff.

24 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
25 compliant rest breaks; or that to establish liability for the failure to provide compliant rest breaks would
26 require an individualized inquiry that would prevent these issues from being resolved on a class and/or
27 collective basis. Plaintiff alleged employees were regularly not provided rest breaks. Defendants allege
28 that many employees took their rest breaks and that in order to prove whether each employee took their

1 meal periods and/or rest breaks would require an individualized inquiry that would prevent this issue from
2 being resolved on a class and/or collective basis.

3 (iii) The risk that Plaintiff would not recover waiting time and wage statement penalties
4 pursuant to Labor Code sections 203 and 226. For example, Plaintiff might not prove that Defendants
5 acted with the intent necessary for the alleged claims for penalties under Labor Code sections 203 and 226.
6 For example, there is currently a split of authority as to whether such penalties can be obtained based on
7 failure to provide rest breaks. *See, e.g., Singletary v. Teavana Corporation* (N.D. Cal. May 2, 2014) 2014
8 WL 1760884, *4 (noting that “the law in this area is murky at best” and holding that section 203 penalties
9 are not applicable to meal and rest break claims). Specifically, section 203 requires that a plaintiff show
10 the employer committed a “willful” violation of the law in withholding wages. “A good faith dispute that
11 any wages are due will preclude imposition of waiting time penalties under Section 203.” 8 Cal. Code
12 Regs. § 13520. Similarly, penalties pursuant to section 226 require a “knowing and intentional” violation.
13 Defendants contends that it would present several good faith defenses that would preclude a finding of
14 willfulness under section 203. *See Choate v. Celite Corp.* (2013) 215 Cal. App.4th 1460 (reversing award
15 of section 203 penalties based on good faith defense where underlying wage claim presented issue of first
16 impression). Any such good faith dispute could preclude penalties.

17 (iv) The risk that Defendants challenged employment policies might not ultimately support
18 class certification or a class-wide liability finding, especially when factoring the separate staffing agencies
19 at issue, *see, Duran*, 59 Cal. 4th at 14 & fn. 28 (citing Court of Appeal decisions favorable on class
20 certification issue without expressing opinion as to ultimate viability of proposition). Defendants have
21 contended, for example, that it did not have a purported policy of not paying required compensation, but
22 rather a policy of paying compensation and of requiring employees to report any unpaid compensable
23 time, and that any failures to report by employees cannot be legally charged to Defendants and, in any
24 event, involve such highly individualized circumstances as to prevent class and collective certification
25 should this case be litigated. *See, e.g., Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 585
26 (employer not required to pay employees for time spent performing work of which the employer had no
27 knowledge).

28 (v) For the same reasons, liability, damages recovery, and certification risks are heightened

1 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendants’ policies and practices
2 could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2) the risk that
3 individual differences between settlement Class Members could be construed as pertaining to liability, and
4 not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or collective treatment could
5 be deemed improper as to one or more claims except for settlement purposes.

6 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
7 discretion could materially impact the recovery by the Class, *see* Labor Code section 2699(e)(1).

8 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
9 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
10 opposed to unpredictable litigation.

11 (viii) Although the PAGA penalties calculated by Plaintiff’s expert amounts to an extravagant
12 \$5,807,200, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as
13 to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In
14 any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a)
15 or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if,
16 based on the facts and circumstances of the particular case, to do otherwise would result in an award that
17 is unjust, arbitrary and oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding any other
18 provision of law, any provision of this code that provides for a civil penalty to be assessed and collected
19 by the Labor and Workforce Development Agency or any of its departments, divisions, commissions,
20 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
21 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former
22 employees pursuant to the procedures specified in Section 2699.3.” Subdivision (f) specifies the penalties
23 in instances where the underlying statute does not specify any civil penalty. In other words, where the
24 facts and circumstances of the particular case demonstrate that an unreduced award would be “unjust,
25 arbitrary and oppressive, or confiscatory,” the court (or arbitrator) may reduce the award so as to ameliorate
26 any such finding. (Setareh Decl., ¶ 9.)

27 In these respects, Defendants strongly denies any liability and the propriety of class certification
28 for any reason other than settlement. (*Id.*) Continued litigation of this lawsuit presented Plaintiff and

1 Defendants with substantial legal risks that were (and continue to be) very difficult to assess. (*Id.*)

2 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
3 reasonable recovery for the Class Members. (*Id.*) The Settlement amount is, of course, a compromise
4 figure. (*Id.*) By necessity, it took into account risks related to liability, damages, class action certification,
5 and all the defenses asserted by Defendants as to all such matters. (*Id.*) Moreover, each settlement Class
6 Member will be given the opportunity to opt out of the Settlement, allowing those who feel they have
7 claims that are greater than the benefits they can receive under this Settlement to pursue their own claims.
8 (*Id.*)

9 **D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
10 **DIRECTING THAT NOTICE BE SENT**

11 “The notice given to the class must fairly apprise the class members of the terms of the proposed
12 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan*
13 *Ass’n* (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to
14 decide whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must
15 strike a balance between thoroughness and the need to avoid unduly complicating the content of the
16 notice and confusing class members. *Wershba*, 91 Cal. App. 4th at 252. Furthermore, an appropriate
17 notice is one which has a reasonable chance of reaching the class members. *Cartt v. Superior Court*
18 (1975) 50 Cal.App.3d 960, 974.

19 The Notice of Class Action Settlement explains in plain and easily understood language what the
20 case is about; the class definition and claims; the settlement amount and approximate individual amount
21 each Class Member and/or PAGA Employee will receive; the requested amounts to be paid to class
22 counsel and as an enhancement award to the class representative; the rights of class members to opt out or
23 object to the Settlement’s terms and the process by which they can do so; the binding effect of the
24 Settlement on those who do not request exclusion, including a description of the claims being released;
25 and the particulars of the final fairness hearing. (Settlement, Ex. 1)

26 The Parties’ proposed plan for directing notice to the Class is also the best notice that is practicable
27 under the circumstances. Using last-known addresses provided by Defendants, the Settlement
28 Administrator will send the Notice by First Class U.S. Mail to all Class Members. (*Id.*, ¶34.) Further, the

1 Settlement Administrator will perform skip traces to obtain the correct address of any Class Members for
2 whom the Notice is returned as undeliverable and will attempt re-mailings where new addresses are
3 ascertained. (*Id.*)

4 **E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL**

5 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the proposed
6 settlement. Cal. Rule Ct. 7.769(e), (g). At the hearing, proponents of the Settlement may explain and
7 describe the terms and conditions and offer argument of settlement approval. Members of the Settlement
8 Class, or their counsel, may also appear and offer evidence and testimony in opposition to the Stipulation
9 of Settlement. The Parties request that the hearing on final approval of the settlement be set 150 days from
10 the Preliminary Approval Hearing, or as soon thereafter as may be convenient for the Court.

11 **VI. CONCLUSION**

12 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
13 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
14 class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be
15 preliminarily approved, the Class should be notified regarding the Settlement, and the Court should
16 schedule a final approval hearing.

17
18 DATED: April 21, 2022

SETAREH LAW GROUP

19
20 /s/ Shaun Setareh

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22 DAVID KELEDJIAN
23 Attorneys for Plaintiff
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