

B. James Fitzpatrick (SBN: 129056)
Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Howard L. Magee (SBN 185199)
Larry W. Lee (SBN 228175)
Max W. Gavron (SBN 291697)
Mai Tulyathan (SBN 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Attorneys for Plaintiff,
EDWARD GNAT, on behalf of himself and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

EDWARD GNAT, on behalf of himself and
all similarly aggrieved employees,

Plaintiff,

v.

QUINN COMPANY; and DOES 1 through
50, inclusive,

Defendants.

Case No. 20CV003431

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

Date: February 23, 2024
Time: 8:30 a.m.
Dept.: 15

Action Filed: December 21, 2020
Trial Date: Not Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 23, 2024, at 8:30 a.m. before the
3 Honorable Thomas W. Wills, judge presiding in Department 15 of the above-referenced Court,
4 located at 1200 Aguajito Road, Monterey, California 93940, Plaintiff Edward Gnat
5 (“Plaintiff”) will and hereby does move the Court for the following relief with respect to the
6 Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Stipulation
7 of Settlement,” “Settlement,” or “SA”) entered into by Plaintiff and Defendant Quinn
8 Company (“Defendant”) (together with Plaintiff, the “Parties”):

- 9 1. That the Court approve the Stipulation of Settlement referenced above;
- 10 2. That the Court conditionally certify the following class for settlement purposes
11 only: all current and former non-exempt employees of Defendant who worked for Defendant
12 in California during the Class Period, who did not sign a post-2013 arbitration agreement
13 (“Settlement Class”);
- 14 3. That Plaintiff Edward Gnat be appointed as the Class Representative and B.
15 James Fitzpatrick and Laura L. Franklin of Fitzpatrick & Swanston and Larry W. Lee, Max W.
16 Gavron, and Mai Tulyathan of Diversity Law Group, P.C. be appointed as Class Counsel;
- 17 4. That the Court preliminary approve the Stipulation of Settlement and the total
18 Gross Settlement Amount in the amount of Five Hundred Thousand Dollars (\$500,000.00);
- 19 5. That the Court finds on a preliminary basis that the Stipulation of Settlement
20 appears to be within the range of reasonableness of a settlement, including the amount of the
21 PAGA penalties, the service payment to the Class Representative, Class Counsel award of
22 attorneys’ fees and costs, settlement administration costs, and the allocation of individual
23 payments to Class Members, that could ultimately be given final approval by this Court;
- 24 6. That the Court approve the mailing of the proposed Notice of Pendency of Class
25 Action (“Notice of Proposed Settlement” or “Notice”) to be sent to Settlement Class Members;
- 26 7. That the Court appoint Phoenix Settlement Administrators as the Settlement
27 Administrator; and
- 28 8. That the Court schedule the matter for a final approval hearing.

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court
3 to preliminarily certify a class for settlement purposes.

4 The basis for this unopposed Motion is that the proposed settlement is fair, adequate,
5 and reasonable, and the procedures proposed by the Parties are adequate to ensure the
6 opportunity of Settlement Class Members to participate in, opt out of, or object to the
7 settlement. This Motion is based on the Memorandum of Points and Authorities included
8 herein, the Stipulation of Settlement and the proposed Notice, and the supporting Declarations
9 of B. James Fitzpatrick, Laura L. Franklin, Larry W. Lee, Max W. Gavron, Mai Tulyathan,
10 and Plaintiff Edward Gnat, upon the oral arguments of counsel (should there be any), and on
11 the complete records and file herein.

12
13 DATED: January 30, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

14
15 By: 

16 B. James Fitzpatrick
17 Larry W. Lee
18 Max W. Gavron
19 Attorneys for Plaintiff,
20 EDWARD GNAT, on behalf of himself and all
21 similarly aggrieved employees
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	9
II. PROCEDURAL HISTORY.....	10
III. DISCUSSION	12
A. Proposed Class Definition	13
B. Settlement Terms and Evaluation	14
1. Amount and Manner of Distribution of the Compensation to be Provided to Settlement Class Members Including the Amount, or an Estimate, of What Each Settlement Class Member Will Receive	21
2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Settlement Class Members or Might Revert to the Defendant	22
3. Scope of the Release of Settlement Class Members' Claims.....	22
4. Tax Treatment of Settlement Amounts.....	23
5. Affirmative Obligations to be Undertaken by Settlement Class Members or Class Counsel and the Reasons for Any Such Obligations.....	23
C. Notice to Settlement Class Members.....	23
D. Typicality and Adequacy of Representation	24
1. Class Representative's Claims are Typical of the Class.....	24
2. Class Counsel Have Adequately Represented the Settlement Class and Have Experience with Wage and Hour Class Actions	25
E. Costs and Fees	25
1. Attorneys' Fees and Costs	25
2. Proposed Payment to the Class Representative	27
3. Settlement Administration Costs.....	27
IV. PLAINTIFF PROVIDED NOTICE TO THE LWDA	28
V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL.....	28

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Brinker Rest. Corp. v. Superior Ct.</i> , 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012)	17
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504 (2018).....	16
<i>City and County of San Francisco v. Sweet</i> , 12 Cal.4th 105, 110 (1995).....	25, 26
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447, 460 (1974)	24
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....	19
<i>Hutcheson v. Superior Ct.</i> , 74 Cal. App. 5th 932, 940 (2022).....	17
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480, 503 (2016)	26
<i>Pointe San Diego Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP</i> , 195 Cal.App.4th 265, 279 (2011)	17
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462, 473 (1981).....	24
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977)	25
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411, 421 (1987)	24
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 812-13 (1971).....	24
<i>Wood v. Kaiser Found. Hosps.</i> , 88 Cal. App. 5th 742 (2023)	15

Federal Cases

<i>Apodaca v. Costco Wholesale Corp.</i> , 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014)	18
<i>Bellinghausen v. Tractor Supply Co.</i> , No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015).....	20
<i>Bernstein v. Virgin Am., Inc.</i> , 3 F.4th 1127, 1144 (9th Cir. 2021).....	16
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980).....	25
<i>Chavez v. Converse, Inc.</i> , 2020 WL 1233919, at *1 (N.D. Cal. 2020).....	18
<i>Dalton v. Lee Publ'ns, Inc.</i> , 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011).....	18
<i>Hammon v. Barry</i> , 752 F.Supp. 1087 (D.D.C. 1990)	14
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1019 (1998).....	24
<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009)	18
<i>Hill v. Walmart, Inc.</i> , 32 F. 4th 811 (9th Cir. 2022)	18

1	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	14
2	<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957, 962 (N.D. Ga. 1980).....	14
3	<i>In re Mego Fin. Corp. Secs. Litig.</i> , 213 F.3d 454, 459 (9th Cir.2000)	20
4	<i>Magadia v. Wal-Mart Assocs. et al.</i> , 2019 U.S. Dist. Lexis 91792	17
5	<i>Magadia v. Wal-Mart Assocs., Inc.</i> , 999 F.3d 668, 677 (9th Cir. 2021).....	17
6	<i>Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.</i> , 834 F.2d 677, 682 (7th Cir. 1987)	14
7	<i>Naranjo v. Spectrum Security Services, Inc.</i> , __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), review granted 2023 WL 3745105 (May 31, 2023)	18
8	<i>Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523, 528 (C.D. Cal. 2004).....	14
9	<i>Priddy v. Edelman</i> , 883 F.2d 438, 447 (6th Cir. 1989).....	14
10	<i>Ricaldai v. U.S. Investigations Servs., LLC</i> , 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012)	18
11	<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	14
12	<i>Steinberg v. Carey</i> , 470 F.Supp. 471 (S.D.N.Y. 1979).....	14
13	<i>Van Ba Ma v. Covidien Holding Inc.</i> , U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014)	20
14	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012).....	20
15	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	25
16	<i>Wright v. Adventures Rolling Cross Country, Inc.</i> , 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013)	18
17		
18	Statutes	
19		
20	California Business & Professions Code § 17200	9, 11
21	Fair Employment Housing Act	9, 11
22	Labor Code § 1174.....	9, 11, 22
23	Labor Code § 1175.....	9, 11, 22
24	Labor Code § 1194.....	9, 11, 22
25	Labor Code § 1197.....	9, 11, 22
26	Labor Code § 1197.1	22
27	Labor Code § 1198.....	9, 22
28		

1	Labor Code § 1199.....	9, 11, 22
2	Labor Code § 201.....	11, 22
3	Labor Code § 201.3.....	22
4	Labor Code § 202.....	11, 22
5	Labor Code § 203.....	11, 22
6	Labor Code § 204.....	9, 11, 22
7	Labor Code § 207.....	22
8	Labor Code § 208.....	22
9	Labor Code § 209.....	22
10	Labor Code § 216.....	9, 11, 22
11	Labor Code § 218.....	9, 11, 22
12	Labor Code § 218.5.....	22
13	Labor Code § 218.6.....	22
14	Labor Code § 221.....	9, 11, 22
15	Labor Code § 223.....	9, 11, 22
16	Labor Code § 225.5.....	22
17	Labor Code § 226.....	9, 11, 18, 22
18	Labor Code § 226(a)	18
19	Labor Code § 226.7.....	9, 11, 22
20	Labor Code § 246.....	22
21	Labor Code § 2698, <i>et seq.</i>	9, 11, 22
22	Labor Code § 2699(f).....	22
23	Labor Code § 2802.....	11, 22
24	Labor Code § 510.....	9, 11, 22
25	Labor Code § 512.....	9, 11, 22, 24
26	Labor Code § 515.....	22
27	Labor Code § 558.....	22
28	Labor Code §§ 201-203	9

1 Labor Code § 2699(f)(2)16

2 **Other Authorities**

3 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).....13

4 *Newberg on Class Actions, supra*, at § 11.2413

5 Manual for Complex Litigation (Third) § 30.4112

6 *Newberg on Class Actions, supra*, at § 11.4714

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 This is a wage and hour class and representative PAGA action arising from Defendant
3 Quinn Company’s (“Defendant”) various alleged Labor Code violations. Specifically, Plaintiff
4 Edward Gnat (“Plaintiff”) asserted that Defendant failed to pay employees all minimum and
5 overtime wages owed, provide legally compliant meal and rest periods, reimburse work-
6 related expenses, pay sick pay wages at the regular rate of pay, and provide accurate wage
7 statements. Based on these violations, Plaintiff asserts violations of Labor Code §§ 201-203,
8 204, 216, 218, 221, 223, 226, 226.7, 510, 512, 1174, 1175, 1194, 1197, 1198, 1199, 2802, and
9 2698, *et seq.* (the “PAGA”), and the California Business & Professions Code § 17200, *et seq.*
10 (the “UCL”). Defendant denies each, every, and all of the allegations of the complaint and
11 contends that its wage and hour practices comply with the Labor Code.¹

12 The Court may recall that the Parties heavily litigated whether this action could
13 proceed as a class action at all. Defendant argued that a prior settlement extinguished
14 Plaintiff’s PAGA claims for the majority of the PAGA period, and that, even if Plaintiff
15 amended his complaint to include class allegations, the class period should not relate back to
16 the initial filing of the complaint, which was initially alleged as a PAGA-only action.
17 Defendant also argued, among other things, that an arbitration agreement precluded class
18 litigation. Following motion practice and discovery, the Parties agreed to attend mediation
19 and arrived at the proposed settlement.

20 Prior to the settlement of this action, Plaintiff and Defendant (jointly referred to as the
21 “Parties”) thoroughly investigated the facts relating to the claims alleged in the operative
22 Complaint against Defendant, through the exchange of formal and informal discovery,
23 including data provided by Defendant pertaining to the number of putative class members and
24 aggrieved employees, number of pay periods at issue, a twenty percent sample of payroll and
25 timekeeping data for the putative class, as well as Defendant’s written policies and handbooks.
26 Thereafter, the Parties mediated with the Honorable Steven Denton (Ret.), after which the

27
28

¹ Plaintiff also alleged an individual discrimination claim under the Fair Employment Housing Act (“FEHA”),
which is being resolved through a separate, confidential settlement agreement.

1 Parties were able to reach the current settlement of the class and PAGA claims. Significantly,
2 the settlement is non-reversionary, such that no monies will revert to Defendant.

3 The Parties believe that this amount is fair, adequate, and reasonable, especially given
4 the risks and uncertainty of class certification and the merits of this case.

5 While Plaintiff and his counsel believe they could prevail on class certification and are
6 confident that they could prevail on the merits of the claims at trial, they recognize the
7 inherent risks in drawn-out litigation and the specific risk that Plaintiff could fail to establish
8 liability. Based on their own independent investigation and evaluation, the Parties and their
9 respective counsel are of the opinion that the settlement for the consideration and on the terms
10 set forth in the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims
11 (“Stipulation of Settlement,” “Settlement,” or “SA”) is fair, reasonable, and adequate and is in
12 the best interests of the Settlement Class and Defendant in light of all known circumstances
13 and the expenses and risks inherent in litigation.

14 Therefore, the Parties respectfully request that the Court grant this Motion for
15 Preliminary Approval of Class Action Settlement.

16 **II. PROCEDURAL HISTORY**

17 On December 21, 2020, Plaintiff filed a representative action complaint in the Superior
18 Court of California, County of Monterey on behalf of himself and all similarly aggrieved
19 employees against Defendant. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 2. Plaintiff
20 filed a First Amended Complaint on February 22, 2021, adding individual claims for age
21 discrimination, wrongful termination, and other claims. *Id.* ¶ 3. After the Court granted
22 Plaintiff’s Motion for Leave to Amend, on June 21, 2022, Plaintiff filed a Second Amended
23 Complaint, adding class action claims, which he contended related back to the original filing
24 of the complaint. *Id.* ¶ 4.

25 Thereafter, the Parties continued to exchange written discovery and extensively meet
26 and confer to address the appropriate scope of discovery. *Id.* ¶ 5. Ultimately, Plaintiff moved
27 to compel Defendant to respond to his written discovery. *Id.* ¶ 5. The Court granted
28 Plaintiff’s Motion, which permitted Plaintiff to conduct discovery on his class claims as

1 pleaded and relating back to the initial filing of the complaint. *Id.*

2 The Second Amended Complaint is the operative complaint (“Complaint”). The
3 Second Amended Complaint asserts claims for: (1) failure to provide meal periods or
4 compensation in lieu thereof in violation of Labor Code §§ 226.7 and 512; (2) failure to
5 provide rest periods or compensation in lieu thereof in violation of Labor Code § 226.7; (3)
6 failure to pay hourly and overtime wages in violation of Labor Code §§ 510 and 1194; (4)
7 failure to pay minimum wage in violation of Labor Code §§ 1197 and 1199; (5) failure to
8 comply with itemized employee wage statement provisions in violation of Labor Code §§ 226,
9 1174, and 1175; (6) failure and refusal to pay agreed wages in violation of Labor Code §§ 201,
10 202, 204, 216, 218, 221, 223, 1194, and 1198; (7) failure to pay all wages upon termination in
11 violation of Labor Code §§ 201, 202, and 203; (8) failure to timely pay wages in violation of
12 Labor Code § 204; (9) failure to reimburse work-related expenses in violation of Labor Code §
13 2802; (10) penalties under the Private Attorneys General Act of 2004, Labor Code § 2698, *et*
14 *seq.*; (11) unfair business practices in violation of Business and Professions Code § 17200, *et*
15 *seq.*; and claims under the FEHA. *Id.* ¶ 6.

16 With respect to his class and representative claims, Plaintiff alleges that Defendant
17 required employees to keep their personal cell phones on their person at all times and respond
18 to work-related calls and text messages while off-the-clock, including outside of their normal
19 working hours and during their meal and rest breaks. Employees were not paid for work
20 performed off-the-clock, nor were they adequately reimbursed for the costs of using their
21 personal cell phones. Moreover, Plaintiff alleges that employees regularly earned non-
22 discretionary incentive wages, which were not calculated in the regular rate of pay during
23 periods when said wages were earned and sick pay was disbursed. Furthermore, Plaintiff
24 alleges that Defendant precluded employees from leaving the premises during rest periods. As
25 such, employees did not receive proper, off-duty breaks as they remained subject to
26 Defendant’s control. Plaintiff also alleges that Defendant failed to provide timely off-duty
27 meal periods to employees and did not pay premium compensation at the regular rate of pay
28 for improper meal and rest breaks. Plaintiff also alleged that Defendant improperly rounded

1 time entries through approximately March 2022. Plaintiff's PAGA claim is predicated on the
2 same violations of the Labor Code referenced above. *Id.*

3 Since the initiation of the lawsuit, the Parties have engaged in significant written
4 discovery as well as the informal exchange of data pertaining to the putative class and
5 aggrieved employees. Plaintiff has reviewed Defendant's production of its policies and
6 practices regarding meal and rest periods, overtime, final payment of wages, wage statements,
7 among others, as well as a twenty percent sample of payroll and punch data records. *Id.* ¶ 9.
8 This investigation enabled Plaintiff to perform an analysis of the putative class and
9 Defendant's liability. *Id.* Thereafter, the Parties attended a full day of mediation with the
10 Honorable Steven Denton (Ret.), after which the Parties were able to reach the current
11 settlement of the class and PAGA claims. The Parties also reached a separate settlement of
12 Plaintiff's individual claims. *Id.* ¶ 10.

13 The Parties recognize the risk, expense, and delay in continuing litigation with the
14 class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.
15 Gavron Decl. ¶ 27. Accordingly, the Parties desire to settle, compromise, and discharge all
16 disputes and claims arising from or relating to the afore-referenced claims.

17 **III. DISCUSSION**

18 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
19 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
20 review after notice has been distributed to the class members for their comment or objections.
21 The *Manual for Complex Litigation, Third* § 30.41 states:

22 Approval of class action settlements involves a two-step process.
23 First, counsel submits the proposed terms of settlement and the court
24 makes a preliminary fairness evaluation. If the preliminary
25 evaluation of the proposed settlement does not disclose grounds to
26 doubt its fairness or other obvious deficiencies, such as unduly
27 preferential treatment of class representatives or of segments of the
28 class, or excessive compensation for attorneys, and appears to fall
within the range of possible approval, the court should direct that
notice...be given to the class members of a formal fairness hearing,
at which arguments and evidence may be presented in support of
and in opposition to the settlement.

(Fed. Jud. Ctr., 3rd ed. 1995).

1 Thus, the preliminary approval by the trial court is simply a conditional finding that the
2 settlement appears to be within the range of acceptable settlements. As Professor Newberg
3 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
4 conference concerning a tentative settlement proposal may vary. The court may find that the
5 settlement proposal contains some merit, is within the range of reasonableness required for a
6 settlement offer, or is presumptively valid subject only to any objections that may be raised at
7 a final hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th
8 ed. 2002).

9 The procedures for the parties’ submission of a proposed settlement for preliminary
10 approval by the court also are discussed in *4 Newberg on Class Actions*:

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

15 *Id.* § 11.24.

16 Here, the Parties have reached such an agreement and have submitted to this Court in
17 connection with this Motion a copy of the Stipulation of Settlement fully setting forth the
18 agreement reached by the Parties. The Stipulation of Settlement sets forth all terms of the
19 agreement reached by the Parties, which include, among other things, the method for
20 calculating the Settlement Class Members’ individual portions of the Gross Settlement
21 Amount.

22 **A. Proposed Class Definition**

23 The current settlement is being settled on behalf of “all current and former non-exempt
24 employees of Defendant who worked for Defendant in California during the Class Period, who
25 did not sign a post-2013 arbitration agreement” (the “Settlement Class” or “Settlement Class
26 Members”). *See* SA ¶ 33. The Class Period is defined as “December 21, 2016, through
27 November 18, 2023.” *See* SA ¶ 5. Defendant estimated that there are 167 Settlement Class
28 Members. Gavron Decl. ¶ 31. Notably, this class is focused on individuals who did not sign a

1 recent arbitration agreement because Defendant contended that its arbitration agreements
2 precluded class claims entirely.

3 **B. Settlement Terms and Evaluation**

4 Courts presume the absence of fraud or collusion in the negotiation of settlement
5 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
6 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682
7 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
8 do not substitute their judgment for that of the proponents, particularly where, as here,
9 settlement has been reached with the participation of experienced counsel familiar with the
10 litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
11 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
12 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
13 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

14 While the recommendations of counsel proposing the settlement are not conclusive, the
15 Court can properly take them into account, particularly where, as here, they have been
16 involved in discovery and negotiations for some period of time, appear to be competent, have
17 experience with this type of litigation, and have exchanged substantial evidence from the
18 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat'l Rural Telecomms. Coop.*,
19 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is
20 preserved, however, a strong initial presumption of fairness attaches to the proposed
21 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
22 are most closely acquainted with the facts of the underlying litigation”).

23 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
24 and hour class action litigation. Plaintiff’s counsel have been approved as class counsel in a
25 number of wage and hour class actions and have extensive litigation experience. Declaration
26 of B. James Fitzpatrick (“Fitzpatrick Decl.”) ¶¶ 4, 5; Declaration of Laura L. Franklin
27 (“Franklin Decl.”) ¶¶ 3, 4; Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 6-8; Gavron Decl. ¶¶
28 32-38; Declaration of Mai Tulyathan (“Tulyathan Decl.”) ¶¶ 4-9. Each side has apprised the

1 other of their respective factual contentions, legal theories, and defenses, resulting in
2 negotiations taking place between the Parties. Gavron Decl. ¶ 26.

3 In advance of mediation, Defendant provided a twenty percent sample of time and pay
4 records for the putative class.² Based on the class data provided by Defendant, Plaintiff
5 estimated that Defendant would face potential liability of up to approximately \$2.8 million for
6 Plaintiff's class claims, as detailed below. Gavron Decl. ¶ 15. Specifically, this amount was
7 calculated by Plaintiff's consultant based on the following approximate breakdowns for each
8 class claim:

- 9 • \$1.1 million for meal break violations calculated at a 51.8%³ violation rate;
- 10 • \$1.2 million for rest break violations calculated at a 51.8% violation rate;
- 11 • \$8,044 for unpaid minimum and overtime wages because of Defendant's
- 12 rounding policy;
- 13 • \$305,260 for Labor Code § 226(e) penalties;
- 14 • \$ 91,370 for unreimbursed business expenses (premised on \$5 reimbursement a
- 15 workweek for 18,274 workweeks); and
- 16 • \$715,493 in waiting time penalties (premised on 111 former class members)⁴.

17 See Gavron Decl. ¶ 15.

18 Plaintiff further estimated the maximum potential PAGA penalties to be approximately
19 \$3,069,800.00. This amount was calculated based on approximately 30,698 pay periods during
20 the relevant time period and a \$100 penalty per violation, which assumes that the Court would
21

22 ² Although the Settlement Class is focused on the approximately 167 individuals who did not sign a post-2013
23 settlement agreement, Defendant produced a twenty percent sampling of time and pay records for the broader
24 group of employees. Gavron Decl. ¶ 15. Accordingly, Plaintiff analyzed the records of approximately 427
25 individuals and utilized statistical analysis and extrapolation techniques to create a damages model applicable to
26 the Settlement Class and Aggrieved Employees. Each of the estimated exposures is derived from the sampling
27 provided. *Id.* ¶ 15.

28 ³ The violation rate was deduced from analysis of the sample. Plaintiff's consultant also deducted the value of
any premiums paid to employees during the appropriate period for purposes of calculating these values. Gavron
Decl. ¶ 15.

⁴ The potential exposure for Plaintiff's sick pay allegations is included in this analysis because Defendant argued
that sick pay wages themselves are not recoverable because there is no private right of action. See *Wood v.*
Kaiser Found. Hosps., 88 Cal. App. 5th 742 (2023), as modified (Mar. 23, 2023) (discussing interplay of PAGA
and private right of action to enforce sick pay law). Therefore, Plaintiff contended that waiting time penalties
were owed to those employees who did not receive sick pay at the correct rate of pay.

1 not “stack” PAGA penalties for distinct violations of the Labor Code. *Id.* ¶ 16. Courts have
2 recently been hesitant to award a higher PAGA penalty for “subsequent” violations where
3 there is no prior citation by the Labor Commissioner, which renders the evaluation of the
4 potential PAGA penalties without “stacking” reasonable. *C.f. Bernstein v. Virgin Am., Inc.*, 3
5 F.4th 1127, 1144 (9th Cir. 2021) (“Virgin was not notified by the Labor Commissioner or any
6 court that it was subject to the California Labor Code until the district court partially granted
7 Plaintiffs’ motion for summary judgment. On this basis, we reverse the district court’s holding
8 that Virgin is subject to heightened penalties for any labor code violation that occurred prior to
9 that point.”). While *Bernstein* addresses whether the higher subsequent penalty should be
10 applied, defendants often argue that this decision supports their position that the court should
11 not award multiple penalties for different predicate violations of the Labor Code during the
12 same pay period. Gavron Decl. ¶ 16. Accordingly, evaluating the settlement compared to a
13 potential penalty of \$100 per pay period is fair, adequate, and reasonable.

14 Even if Plaintiff were to prevail on the merits of the PAGA claim, the potential
15 recovery is uncertain. Under PAGA, trial courts have considerable discretion to reduce the
16 penalty award. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full
17 amount of PAGA penalties where “if, based on the facts and circumstances of the particular
18 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
19 confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks*
20 *Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
21 maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at
22 complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal
23 found such reduction to be proper and affirmed a judgment which only provided for a PAGA
24 penalty of \$5 per pay period. *Id.* at 539; *see O’Connor*, 2016 WL 4398271, at *17 (noting that
25 even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court
26 may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary
27 and oppressive, or confiscatory”).

28 Courts routinely award far less than the statutory maximum amount of civil penalties,
even where an underlying violation of the Labor Code is found. For example, in the matter of

1 *Magadia v. Wal-Mart Assocs., et al.*, while the trial court imposed substantial PAGA penalties
2 upon the defendant, such amount still represented reductions of 67% and 80% of the potential
3 PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019).
4 Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the
5 Ninth Circuit reversed the trial court's ruling, which demonstrates the significant risk
6 presented in moving forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668,
7 677 (9th Cir. 2021).

8 On the merits, there are also significant risks presented if Plaintiff was to move
9 forward with litigation. Defendant argued that it complied with the Labor Code in all respects
10 and that class certification was not appropriate. As noted above, Defendant argued that class
11 claims were not appropriate in this case given the arbitration agreements at play, and, even if a
12 class claim could survive, the liability period should have been limited to the statute of
13 limitations calculated by the filing date of Plaintiff's class allegations. *See Pointe San Diego*
14 *Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, 195 Cal.App.4th 265,
15 279 (2011) (holding relations back only applies where original complaint alleged similar
16 facts); *but see Hutcheson v. Superior Ct.*, 74 Cal. App. 5th 932, 940 (2022) (applying relation
17 back in context of PAGA action). While Plaintiff prevailed on this argument in a motion to
18 compel discovery, Defendant likely would have raised the issue again in a motion for
19 summary adjudication following class certification. Gavron Decl. ¶ 17.

20 Defendant also argued that its compliant policies limited its liability and/or required
21 denial of class certification. For example, Defendant would have argued that Plaintiff could
22 not demonstrate an underlying violation of the Labor Code to support the meal and rest period
23 claims. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537
24 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no
25 work thereafter is performed."). Defendant argued that it had legally compliant written
26 policies, which satisfied *Brinker* and that any failure to take a legally compliant meal or rest
27 period by employees was the result of individual choice and thus not capable of class
28 resolution. Defendant also disputed that it controlled employees during meal or rest periods.

1 Defendant would have argued that the waiting time penalties, which comprise a
2 significant portion of the estimated damages, are subject to a complete defense. Defendant
3 would have argued that a good faith dispute exists as to whether the allegedly underpaid wages
4 were due to Plaintiff and the class members considering Defendant's legally compliant
5 policies. If Defendant was successful on the good faith defense, the Court may not have
6 awarded waiting time penalties at all, reducing the exposure by \$715,493 on the class claims.
7 *Hill v. Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding good faith defense because
8 defendant reasonably believed wages were not due and owing at time of separation of
9 employment); *Naranjo v. Spectrum Security Services, Inc.*, ___ Cal. Rptr. 3d ___, 2023 WL
10 2261253 (Feb. 27, 2023), review granted 2023 WL 3745105 (May 31, 2023); *Chavez v.*
11 *Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an employer's failure
12 to pay is not willful where there is uncertainty in the law or a "good faith mistaken belief that
13 wages are not owed").

14 Similarly, on Plaintiffs' wage statement claim, Plaintiffs would face the additional
15 burden of demonstrating that any alleged omission of information from the wage statements
16 was a "knowing and intentional failure" by Defendant to comply with Labor Code § 226(a).
17 See *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting
18 summary judgment in favor of employer and finding its conduct was not "knowing and
19 intentional"). Defendant also would have argued that penalties under Section 226 are subject
20 to a similar "good faith" defense as articulated above in the context of Plaintiffs' claims for
21 waiting time penalties. See, e.g., *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at
22 *3 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief that it is not in
23 violation of Section 226, any violation is not knowing and intentional."); *Wright v. Adventures*
24 *Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same);
25 *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012)
26 (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011)
27 (same). *Naranjo* also permitted a good faith defense to rebut the plaintiff's claim for penalties,
28 pursuant to Labor Code § 226.

1 Defendant also contended that it paid employees all minimum and overtime wages.
2 Defendant argued that any work performed off the clock was unauthorized and not subject to a
3 uniform policy and thus would not be susceptible of class resolution. To the extent any
4 employees worked while off-the-clock, Defendant argued that the practice was voluntary.
5 With respect to the rounding issue, Defendant argued that the potential exposure on this claim
6 was extremely limited and therefore would not subject it to significant liability, if at all.
7 Further, Defendant would have argued that neutral rounding policies are lawful and therefore
8 it should not be subjected to liability and certainly not penalties that require a showing of
9 “willfulness” as noted above.

10 Defendant argued that it implemented a lawful reimbursement policy. While Plaintiff
11 estimated \$5 a workweek in exposure for this claim above, the sampling provided by
12 Defendant in advance of mediation demonstrated that a majority of the workforce was
13 receiving reimbursements for use of cellular phones. Gavron Decl. ¶ 22. Accordingly, this
14 claim was heavily disputed by Defendant.

15 With respect to the PAGA penalties, Defendant argued that following the *Ruvalcaba*
16 Settlement, its wage and hour compliance was high and thus the potentially available PAGA
17 penalties were minimal. Review of the sampling of time and pay records demonstrated that
18 the majority of the alleged violations were occurring during the putative class period, and thus
19 the potential value of the PAGA claims were appropriately discounted given the higher
20 compliance rate. Gavron Decl. ¶ 23.

21 Although Plaintiff believes that a class can be certified, Plaintiff also believes in the
22 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
23 involved in not prevailing on one or more of the causes of action or theories alleged in the
24 operative Second Amended Complaint at trial, the possibility of non-certification, and the
25 potential for appeals. Gavron Decl. ¶ 28. These risks on class certification are compounded by
26 the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1
27 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial
28 after eight years of litigation, but the judgment and the certification ruling were reversed by

1 the California Supreme Court after an additional five years of litigation. The case was
2 remanded to superior court where class certification was denied and plaintiffs' subsequent
3 appeal also was denied.

4 Thus, the settlement for each Settlement Class Member is fair, reasonable, and
5 adequate, given the inherent risks of litigation and the costs of pursuing such litigation. The
6 settlement is the result of extensive arm's length negotiations between the Parties and their
7 counsel and was facilitated by an experienced and neutral mediator.

8 Indeed, numerous courts have held that gross settlements approximating between only
9 8 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego*
10 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
11 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a
12 cash settlement amounting to only a fraction of the potential recovery does not per se render
13 the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement
14 should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether
15 the settlement is fair and adequate depends on the "the difficulties in proving the case");
16 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
17 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
18 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist.
19 Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and
20 hour class settlement which obtained **only 9.1%** of projected damages, given the risks of
21 continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC,
22 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement
23 of approximately 15% of the potential recovery was fair and reasonable). Here, the proposed
24 settlement is approximately 8.5% (\$500,000 / ~\$5.87 million) of the potentially available
25 penalties, which factors in the risks described above if the case were to proceed through
26 litigation and appeals. Gavron Decl. ¶ 16.

27 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
28 Pendency of Class Action ("Notice of Proposed Settlement" or "Notice"), should any

1 Settlement Class Member wish to pursue his or her own case for the claims being released
2 herein, each Settlement Class Member has the right to submit a request for exclusion (*i.e.*, opt-
3 out) from the settlement. *See* Notice, attached as **Exhibit A** to the Stipulation of Settlement.
4 Moreover, as set forth in the Notice, Settlement Class Members are advised of their right to
5 attend the final approval hearing and/or object to any of the terms contained in the Stipulation
6 of Settlement. *Id.*

7 **1. Amount and Manner of Distribution of the Compensation to be**
8 **Provided to Settlement Class Members Including the Amount, or an**
9 **Estimate, of What Each Settlement Class Member Will Receive**

10 The Stipulation of Settlement provides for Five Hundred Thousand Dollars
11 (\$500,000.00) as the total Gross Settlement Amount. *See* SA 13. The Net Settlement Amount
12 [calculated after deduction of Class Counsel’s attorneys’ fees (up to \$166,666.67), costs (up to
13 \$25,000.00), Class Representative Service Payment (up to \$5,000.00), payment of PAGA
14 penalties (\$30,000.00), and Settlement Administration Costs (up to \$15,750.00)] is estimated
15 to be approximately \$257,583.33. *See* SA ¶¶ 18, 45.c, 45.d.v, 45.d.vi, 45.d.vii, 45.d.viii. Each
16 Settlement Class Member that does not opt-out of the settlement will be awarded a portion of
17 the Net Settlement Amount on a pro-rata basis, based upon the number of workweeks he or
18 she was employed during the Class Period. *See* SA ¶ 45.d.i.

19 Based thereon, on a raw average, each Settlement Class Member potentially may
20 recover approximately \$1,542.42 (\$257,583.33 / 167 class members). Gavron Decl. ¶ 16. The
21 amount actually paid to each Settlement Class Member will increase or decrease depending on
22 the actual number of workweeks he or she was employed during the Class Period.

23 Additionally, as part of the payment of PAGA penalties, 25% of the PAGA Payment,
24 or \$7,500.00, shall be paid to PAGA Group Members⁵ on a pro rata basis, based on the
25 number of pay periods they were employed during the PAGA Period. *See* SA ¶¶ 45.d.viii,
26 45.d.ix. On a raw average, each PAGA Group Member is estimated to receive approximately

27 ⁵ “PAGA Group” and “PAGA Group Members” are all current and former non-exempt
28 employees of Defendant who worked for Defendant in California at any time from June 14,
2022, through November 18, 2023. SA ¶ 22. The PAGA Period is June 14, 2022, through
November 18, 2023. *Id.* ¶ 24.

1 \$5.86. (\$7,500 / 1280 PAGA Group Members).

2 Finally, funds from any checks that have not been cashed within 180 days of issuance
3 shall be paid to the *cy pres* recipient Watsonville Law Center. *See* SA ¶¶ 45.d.iii, 45.d.ix.
4 Counsel do not have any conflicts of interest with proposed *cy pres* recipient. Gavron Decl. ¶
5 40; Fitzpatrick Decl. ¶ 6; Franklin Decl. ¶ 5; Lee Decl. ¶ 10; Tulyathan Decl. ¶ 11.

6 **2. Whether, and Under What Circumstances, Amounts Available for**
7 **Payment in Settlement Might Not Be Paid to Settlement Class**
8 **Members or Might Revert to the Defendant**

9 None of the settlement funds will revert to Defendant.

10 **3. Scope of the Release of Settlement Class Members' Claims**

11 As a condition of participating in this class action settlement, Settlement Class
12 Members shall release the Released Parties from “any and all claims made or which could
13 have reasonably been made based on the facts pled in the operative complaint that arose
14 during the Class Period, including claims for violation of Labor Code §§ 201, 202, 203, 204,
15 216, 218, 221, 223, 226, 226.7, 246, 510, 512, 515, 1174, 1175, 1194, 1197, 1198, 1199, and
16 2802 (“Released Claims”) during the Class Period. SA ¶¶ 26, 54. The Released Parties are
17 defined as “Defendant and its current and former parents, owners, subsidiaries, divisions, and
18 affiliated or related persons or entities, and each of their respective officers, directors,
19 employees, partners, shareholders, attorneys, agents, executors, and assigns.” *Id.* ¶ 28.

20 In addition, upon the Effective Date and funding of the Gross Settlement Amount,
21 Plaintiff, the State of California, and PAGA Group Members shall release the Released Parties
22 from “any and all claims made or which could have reasonably been made based on the facts
23 pled in the operative complaint that arose during the PAGA Period, including claims for civil
24 penalties under the PAGA premised on the violation of Labor Code §§ 201, 201.3, 202, 203,
25 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194,
26 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699(f) and (g)” during the PAGA Period. *Id.* ¶¶
27 27, 55.

28 Given that the releases are tailored to claims arising from the facts alleged in the
Second Amended Complaint, the releases are appropriately limited.

1 **4. Tax Treatment of Settlement Amounts**

2 As Plaintiff’s lawsuit sought unpaid wages, interest, and penalties, the Parties have
3 agreed that twenty percent (20%) of the Individual Settlement Payments to Class Members
4 shall be classified as wages. SA ¶¶ 16, 45.d.iii. Eighty percent (80%) of the Individual
5 Settlement Payments shall be classified as interest and other non-wage income. *Id.*

6 With respect to the PAGA payments distributed to PAGA Group Members
7 (“Individual PAGA Payments”), one hundred percent (100%) of the amount classified as
8 penalties. SA ¶¶ 15, 45.d.ix.

9 **5. Affirmative Obligations to be Undertaken by Settlement Class**
10 **Members or Class Counsel and the Reasons for Any Such**
11 **Obligations**

12 As stated above, Settlement Class Members do not need to do anything should they
13 wish to receive their share of the settlement funds. In other words, because this is not a claims-
14 made settlement, Settlement Class Members will not be required to make a submission to
15 participate in the settlement. Thus, this substantially decreases the amount of burden each
16 Settlement Class Member must bear in order to receive their Individual Settlement Payment. If
17 a Settlement Class Member does not wish to take part in this settlement and be bound by the
18 Released Claims, the Settlement Class Member must submit a request for exclusion. *See* SA ¶
19 50.

20 **C. Notice to Settlement Class Members**

21 Should the Court grant the instant motion, Defendant will provide the Settlement
22 Administrator with a list containing each Settlement Class Member’s full name, last known
23 address, Social Security number, total number of workweeks employed during the Class
24 Period, and total number of pay periods employed during the PAGA Period (“Settlement Class
25 List”). SA ¶ 46. Upon receipt of the information and prior to mailing the Notice to Settlement
26 Class Members, the Settlement Administrator shall perform a search based on the National
27 Change of Address Database for information to update and correct for any known or
28 identifiable address changes. *Id.* ¶ 48. Within ten (10) calendar days of receipt of the
Settlement Class List from Defendant, the Settlement Administrator will mail the Notice out to

1 Settlement Class Members. *Id.* Any Notice returned to the Settlement Administrator as non-
2 deliverable on or before the opt-out deadline shall be sent via regular first-class U.S. mail to
3 the forwarding address affixed thereto. *Id.* If no forwarding address is provided, the Settlement
4 Administrator shall perform an advanced skip trace to locate the most current address and
5 resend the Notice within five (5) calendar days. *Id.*

6 As set forth in the Notice, Settlement Class Members will be allowed to opt out of the
7 settlement by a certain deadline, or object to the settlement. Stipulation of Settlement at
8 Exhibit A.

9 **D. Typicality and Adequacy of Representation**

10 **1. Class Representative's Claims are Typical of the Class**

11 The commonality requirement is met when there are questions of law and fact common
12 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of
13 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
14 salient facts couple with disparate legal remedies within the class”). Commonality requires
15 only that some common legal or factual questions exist; the plaintiffs need not show that all
16 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
17 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*
18 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
19 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as it is
20 here, the class wide impact of the Defendant’s policies satisfies the commonality requirement.
21 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

22 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or
23 procedure violated the Labor Code by failing to pay all minimum and overtime wages owed,
24 provide legally compliant meal and rest periods, pay sick pay wages at the regular rate of pay,
25 and provide accurate wage statements. Declaration of Edward Gnat (“Gnat Decl.”) ¶¶ 3-6. In
26 other words, Plaintiff contend that he was subjected to the same policy and practice as other
27 Settlement Class Members and that his claims are typical to those of the Settlement Class.

28 Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor

1 have any such issues been raised or presented. Gnat Decl. ¶ 7. Plaintiff has taken all necessary
2 steps to represent the interests of the Settlement Class, by providing information and
3 documents to his counsel. *Id.* ¶ 8. For such reasons, Plaintiff has adequately represented the
4 Settlement Class and will continue to do so.

5 **2. Class Counsel Have Adequately Represented the Settlement Class
and Have Experience with Wage and Hour Class Actions**

6 From the inception of the case, Class Counsel have zealously represented the interests
7 of the class. The settlement was obtained for the benefit of the Settlement Class, as opposed to
8 the individual Class Representative. Further, Class Counsel have been approved as class
9 counsel on a number of prior cases, have litigated numerous other class action cases, and are
10 competent to represent the class. Fitzpatrick Decl. ¶¶ 4, 5; Franklin Decl. ¶¶ 3, 4; Lee Decl. ¶¶
11 6-8; Gavron Decl. ¶¶ 32-38; Tulyathan Decl. ¶¶ 4-9.

12 **E. Costs and Fees**

13 **1. Attorneys' Fees and Costs**

14 California state and federal courts have recognized that an appropriate method for
15 determining award of attorneys' fees is based on a percentage of the total value of benefits to
16 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
17 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
18 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
19 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
20 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
21 entire burden alone." *Vincent*, 557 F.2d at 769.

22 The Common Fund doctrine is predicated on the principle of preventing unjust
23 enrichment. When a litigant's efforts create or preserve a fund from which others derive
24 benefits, she may require the passive beneficiaries to compensate those who created the fund.
25 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
26 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.
27 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine
28 has been applied "consistently in California when an action brought by one party creates a

1 fund in which other persons are entitled to share.” The reasons for applying the common fund
2 doctrine include: “fairness to the successful litigant, who might otherwise receive no benefit
3 because his recovery might be consumed by the expenses; correlative prevention of an unfair
4 advantage to the others who are entitled to share in the fund and who should bear their share of
5 the burden of its recovery; encouragement of the attorney for the successful litigant who will
6 be more willing to undertake and diligently prosecute proper litigation for the protection or
7 recovery of the fund if he is assured that he will be properly and directly compensated should
8 his efforts be successful.” *Id.*

9 Indeed, most recently, the California Supreme Court has also now held that the award
10 of attorneys’ fees in common fund wage and hour class action settlements should start with the
11 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
12 overwhelming majority of federal and state courts in holding that when class action litigation
13 establishes a monetary fund for the benefit of the class members, and the trial court in its
14 equitable powers awards class counsel a fee out of that fund, the court may determine the
15 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

16 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
17 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
18 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
19 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
20 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

21 The Parties have agreed to a payment of a maximum of \$166,666.67, or one-third of
22 the Gross Settlement Amount for payment to Class Counsel as attorneys’ fees. SA ¶ 45.d.vi.
23 The Parties have agreed to a payment of the foregoing attorneys’ fees and, thus, this payment
24 should be presumed to be fair. Further, the parties have agreed to reimbursement of Class
25 Counsel’s litigation costs up to \$25,000.00. *Id.* Class Counsel have, at their own risk,
26 expended costs, for example, to file this instant action, effectuate service of process, pay
27 mediation fees, and pay other litigation-related costs.

28 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and

costs being requested by the Parties, which will be further supported and discussed in Plaintiff's Motion for Final Approval, should the Court grant this Motion.

2. Proposed Payment to the Class Representative

Class Representative Edward Gnat requests an enhancement of \$5,000.00. SA ¶ 45.d.vii. The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the Stipulation of Settlement. As part of his duties as Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. Gnat Decl. ¶ 8. In addition to the invaluable services that he provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Settlement Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action.

Furthermore, Plaintiff believes that future employers are much less likely to hire individuals who have filed suit against their employer, particularly cases of this nature, so that Plaintiff may face prejudice in the future from other potential employers. Plaintiff took this risk upon himself and the whole Settlement Class benefited from these risks taken by Plaintiff. Settlement Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

3. Settlement Administration Costs

The Parties have agreed to an estimated payment of \$15,750.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and to administer this settlement, which shall be paid out of the Gross Settlement Amount. SA ¶¶ 32, 45.d.v. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The estimated cost per PAGA Group Member is approximately \$12.30 for distribution (\$15,750 / 1,280 PAGA Group Members). There are 167 class members that also may have some overlap with the PAGA Group Members, which also share the cost of administration. The

Parties believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 31.

IV. PLAINTIFF PROVIDED NOTICE TO THE LWDA

Concurrent with the filing of this Motion, Plaintiff provided notice to the Labor and Workforce Development Agency. Gavron Decl. ¶ 39.

V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Settlement Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective Parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice, and set a date for a final approval hearing.

DATED: January 30, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: 

B. James Fitzpatrick

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff,

EDWARD GNAT, on behalf of himself and all similarly aggrieved employees