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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

10 RENE BECKOM, on behalf of himself and all
11 others similarly situated,

12 *Plaintiff,*

13 vs.

14 STRAUCH & COMPANY, a California
15 corporation; CAMERON PARK
16 PETROLEUM, INC., a California corporation;
17 STRAUCH BROTHER INCORPORATION,
18 a California corporation; STRAUCH
19 MANAGEMENT, LLC, a California
20 corporation; MARK B. STRAUCH, an
individual; MATTHEW C. STRAUCH, an
individual; and DOES 1 through 50, inclusive,

21 *Defendants*
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Case No.: 34-2020-00289457

**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; [Proposed] Order]*

Date: March 10, 2023
Time: 9:00 a.m.
Place: Department 27

Complaint Filed: November 25, 2020
FAC Filed: March 22, 2021

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

2 PLEASE TAKE NOTICE that on March 10, 2023 at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 27 of the above-entitled Court, Plaintiff RENE BECKOM
4 (“Plaintiff”) will and does hereby move this Court for an Order:

- 5 • Preliminarily approving the proposed Stipulation of Class and Representative Action
6 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 ILYM Group as the Settlement Administrator;
- 11 • Directing that notice be mailed to the Settlement Class;
- 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: February 3, 2022

SETAREH LAW GROUP

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22 SHAUN SETAREH
23 DAVID KELEDJIAN
24 Attorneys for Plaintiff
25 RENE BECKOM
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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE MAJOR TERMS OF SETTLEMENT	2
III.	STATEMENT OF FACTS.....	3
A.	THE PARTIES.....	3
B.	PROCEDURAL HISTORY.....	3
C.	INVESTIGATION AND DISCOVERY	4
D.	SETTLEMENT NEGOTIATIONS AND SETTLEMENT	4
E.	REASONABLENESS OF THE SETTLEMENT	5
IV.	DESCRIPTION OF THE SETTLEMENT	5
A.	CONTINGENT NATURE OF THE SETTLEMENT	5
B.	APPOINTMENT OF SETTLEMENT CLASS COUNSEL.....	6
C.	APPOINTMENT OF SETTLEMENT ADMINISTRATOR.....	6
D.	DESCRIPTION OF THE SETTLEMENT CLASS.....	6
E.	SCOPE OF THE RELEASE.....	6
F.	SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT MONIES	8
G.	CLASS MEMBER SETTLEMENT PAYMENT FORMULA	9
1.	Calculation of the Individual Settlement Payment and the PAGA Payment to the Settlement and Aggrieved Employees	9
H.	NOTICE TO CLASS MEMBERS OF SETTLEMENT	10
I.	NOTICE AND PAGA PAYMENT TO THE LWDA	11
V.	ARGUMENT.....	12
A.	THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF CIVIL PROCEDURE SECTION 382.....	12
1.	Objectively Ascertainable and Sufficiently Numerous Class	13
2.	Predominance of Common Questions.....	13
3.	Typicality of Plaintiff's Claims.....	14

1	4.	Adequacy of Plaintiff and Class Counsel to Represent the Class.....	15
2	B.	STANDARD FOR GRANTING PRELIMINARY SETTLEMENT	
3		APPROVAL.....	15
4	C.	THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER	
5		PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS	
6		FAIR, ADEQUATE, AND REASONABLE.....	16
7	1.	Settlement Resulted From Serious, Informed, Non-Collusive	
8		Negotiations	16
9	2.	Sufficient Fact Investigation and Discovery Has Occurred to Assess	
10		the Fairness of the Settlement	16
11	3.	Plaintiff’s Counsel Are Experienced Class Action and Employment	
12		Attorneys and the Amount of Attorneys’ Fees Sought Are Appropriate....	17
13	4.	The Settlement Is Fair and Reasonable Based on the Strength of	
14		Plaintiff’s Case and the Risks and Costs of Further Litigation.....	18
15	D.	THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER	
16		DIRECTING THAT NOTICE BE SENT.....	22
17	E.	THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL	23
18	VI.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1135.....	24
<i>Air Lines Stewards v. American Airlines, Inc.</i> (7th Cir. 1972) 455 F.2d 101	25
<i>Alaniz v. California Processors, Inc.</i> (N.D. Cal. 1976) 73 F.R.D. 269	19
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal. App. 3d 1341	21
<i>Bowles v. Super. Ct. (Nickel, Jr.)</i> (1955) 44 Cal.2d 574.....	19
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	29
<i>Center for Biological Diversity v. Cty. of San Bernardino</i> (2010) 185 Cal.App.4 th 866	24
<i>Chaves v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	22
<i>Choate v. Celite Corp.</i> (2013) 215 Cal. App.4th 1460.....	27
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268	22, 23
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	20
<i>Dilts v. Penske Logistics</i> (S.D. Cal. 2014) LLC 2014 WL 205039.....	26
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	18, 22
<i>Duran v. US Bank Nat’l Ass’n</i> (2014) 59 Cal.4th 1	26, 27, 28
<i>Fireside Bank v. Super. Ct. (Gonzalez)</i> (2007) 40 Cal.4th 1069	20
<i>Global Minerals & Metals Corp. v. Superior Court</i> (2003) 113 Cal.App.4th 836.....	18, 19
<i>Hanon v. Dataproducts Corp.</i> (9th Cir. 1992) 976 F.2d 497	20
<i>Hebbard v. Colgrove</i> (1972) 28 Cal.App.3d 1017.....	19
<i>Hicks v. Kaufman & Broad Home Corp.</i> (2001) 89 Cal.App.4th 908	20
<i>In re Drexel Burnham Lambert Group, Inc.</i> (2d Cir. 1992) 960 F.2d 285.....	19
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706	21, 22
<i>Jaimez v. Daiohs USA, Inc.</i> (2010) 181 Cal.App.4th 1286	18, 19
<i>Lafitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5 th 480	24
<i>LaSala v. American Sav. & Loan Ass’n</i> (1971) 5 Cal. 3d 864.....	22
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4 th 19.....	24
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	18

1	<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442.....	21
2	<i>Miller v. CEVA Logistics U.S.A., Inc.</i> (E.D. Cal. Feb. 19, 2015) 2015 WL 729638	26
3	<i>Morillion v. Royal Packing Co.</i> (2000) 22 Cal. 4th 575.....	27
4	<i>Officers for Justice v. Civil Serv. Comm’n</i> (9th Cir. 1982) 688 F.2d 615	22
5	<i>Reyes v. San Diego Cty. Bd. of Supervisors</i> (1979) 196 Cal.App.3d 1263	20
6	<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2000) 563 F.3d 948	26
7	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926.....	19
8	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	18, 20
9	<i>Schwartz v. Harp</i> (C.D. Cal. 1985) 108 F.R.D. 279	20
10	<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal. App. 4th 495	22
11	<i>Trotsky v. L.A. Fed. Sav. & Loan Ass’n</i> (1975) 48 Cal.App.3d 134	29
12	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224.....	24, 25, 29

Statutes

14	8 Cal. Code Regs. § 13520	27
15	Cal. Rule Ct. 7.769	30
16	California Rule of Court 3.769.....	22
17	Code of Civil Procedure § 382	18
18	Labor Code section 203	27
19	Labor Code section 2699	26, 28

Other Authorities

21	<i>Manual for Complex Litigation</i> , 2d (1993).....	19
22	<i>Newberg on Class Actions</i> (3d ed. 1991)	19

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff RENE BECKOM (“Plaintiff”) seeks preliminary approval of a non-reversionary class and
4 representative action settlement of wage and hour and PAGA penalty claims against Defendants
5 STRAUCH & COMPANY, CAMERON PARK PETROLEUM, INC., STRAUCH BROTHER
6 INCORPORATION, STRAUCH MANAGEMENT, LLC, LINDA PETROLEUM, INC., M&M FUELS,
7 INC., RANCHO CONVENIENCE CENTER, INC., WOODCREEK OAKS PETROLEUM, INC., MARC
8 B. STRAUCH, and MATTHEW C. STRAUCH (collectively “Defendants”) (collectively with Plaintiff, the
9 “Parties”) for a Gross Settlement Amount (“GSA”) of **\$2,700,000.00**. The Settlement Class consists of
10 approximately 2,931 Class Members who have worked approximately 51,000 workweeks.

11 The Net Settlement Amount (“NSA”) expected to be paid to Class Members—after payment of
12 Class Counsel fees of one-third (1/3) of the GSA (\$900,000.00) and costs of up to \$20,000, settlement
13 administration costs of up to \$26,000, Plaintiff’s enhancement award of \$5,000, and a payment to the
14 California Labor & Workforce Development Agency (“LWDA”) pursuant to the Private Attorneys
15 General Act of 2004 (“PAGA”) of \$ 150,000.00 (75% of the total PAGA payment of \$200,000, which
16 includes the 25% portion of the PAGA payment, or \$50,000, that will be paid to PAGA Employees
17 employed during the PAGA period), with an average individual settlement payment to each Class
18 Member of approximately **\$545.55**. Plaintiff has obtained a significant monetary recovery for Class
19 Members.

20 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced
21 counsel after sufficient formal and informal written discovery and investigation into the facts with
22 guidance of mediator Todd Smith, an experienced and well-respected mediator. The Settlement seeks to
23 fully and finally settle and resolve all claims that were pled or could have been pled based on the
24 allegations in the operative Complaint (“FAC”) individually and on behalf of all Class Members of the
25 Class, defined as all individuals who performed work for any Defendant in hourly or non-exempt positions
26 in California on or after November 24, 2016 through February 4, 2022 (“Class Members”) The Settlement
27 will result in financial benefit to the class members on terms that are fair, reasonable, and adequate.

28 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 Settlement 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 the Class for purposes of settlement only.
- Defendants will pay a maximum of **\$2,700,000.00**, referred to as the GSA.
- Defendants will not oppose Class Counsel’s application for fees of 1/3 of the GSA (**\$900,000**) and costs not to exceed **\$20,000**, to be paid out of the GSA.
- The notice portion of the Settlement will be administered by ILYM Group (“ILYM”), whose costs are not expected not to exceed **\$26,000** to administer the Settlement per its terms.
- Out of the GSA, **\$200,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$150,000**, to be paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$50,000**, 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 Payment 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 **\$1,599,000.00**. Each Participating Class Member will receive a *pro rata* share based upon the number of weeks worked during their respective 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 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 will be

negotiable for not less than 180 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.

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

III. STATEMENT OF FACTS

A. THE PARTIES

Defendants provide fuel, convenience, and carwash services throughout California. (Setareh Decl., ¶ 21.) Plaintiff has been working for Defendants as a non-exempt hourly employee from around November of 2019 through February of 2020 (*Id.*)

Plaintiff alleges Defendants violated various provisions of the California Labor Code and applicable Wage Orders by failing to: pay property wages and overtime; provide meal and rest breaks; and various derivative claims under the Labor Code and unfair competition law. (First Amended Complaint, “FAC,” *passim*, on file herein.) Specifically, Plaintiff alleges that he and other class members were required to work through their uncompensated meal periods, and earned performance-based bonus pay which was not factored into their effective regular rates of pay. (FAC, ¶¶ 30-33.)

Lastly, Plaintiff alleges that because of the above violations, he and other class members were not paid all final wages upon termination, Defendants did not provide accurate written wage statements, and Defendants violated California’s Business and Professions Code section 17200. (FAC, ¶¶ 84-119.) Plaintiff also seeks to recover penalties, based on the forgoing allegations, on behalf of the LWDA pursuant to PAGA. (*Id.*, ¶¶ 120- 125.)

B. PROCEDURAL HISTORY

On November 25, 2020, Plaintiff filed this class action complaint in the Sacramento County Superior Court, alleging six causes of action: (1) Failure to provide meal periods, (2) failure to provide rest periods, (3) failure to pay hourly wages and overtime, (4) failure to provide accurate written wage statements, (5) failure to timely pay all final wages, and (6) violation of California’s Unfair Competition law. (Initial Complaint on file herein.) Having given proper notice to LWDA, and with leave of this Court,

1 Plaintiff filed a the FAC on March 22, 2021, adding a single cause of action for civil penalties under the
2 California Private Attorney General Act, Labor Code § 2699, et seq., (“PAGA”), based on the allegations
3 of the initial complaint. (See FAC, *passim*.)

4 The Parties agreed to mediate Plaintiff’s alleged wage and hour and PAGA claims with respected
5 mediator Todd Smith on October 25, 2021. (Setareh Decl., ¶ 9.) While the matter did not settle at
6 mediation, the Parties continued to work toward settlement with the assistance of Mr. Smith. (Setareh
7 Decl., ¶ 9.) The Parties reached a tentative agreement and executed a memorandum of understanding on
8 April 15, 2022. The Parties later jointly prepared, memorialized, finalized and executed the terms of the
9 Joint Stipulation of the Class Action Settlement on November 22, 2022. (Setareh Decl., Ex 1.)

10 **C. INVESTIGATION AND DISCOVERY**

11 Plaintiff propounded written discovery on June 9, 2021. (Setareh Decl., ¶ 6.) Defendants
12 provided written responses on August 31, 2021. The Parties thereafter met and conferred regarding the
13 need for supplemental responses. (Setareh Decl., ¶ 6.) Plaintiff filed motions to compel further responses
14 to interrogatories and requests for production of documents, as to three of the named Defendants, on
15 January 6, 2022. (See Plaintiff’s Motions to Compel, on file herein.)

16 Thereafter, the Parties agreed to attend mediation to attempt to resolve the action entirely and
17 further agreed to engage in informal discovery in advance and in preparation thereof. (Setareh Decl.,
18 ¶7.) Defendants’ volumes of records and documents. (*Id.*) This included a sample of pay and time
19 records, relevant policies; and other documents relevant to the litigation. (*Id.*) These records allowed
20 Plaintiff to analyze the potential liability of Defendants for the alleged claims. (*Id.*) Plaintiff hired an
21 expert to hire analyze the produced data with respect to potential damages and penalties in preparation
22 for mediation. (*Id.*)

23 **D. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

24 On October 25, 2021, the Parties participated in a full-day mediation before experienced mediator
25 Todd Smith (Setareh Decl., ¶9.) During the mediation, the Parties had a full day of productive negotiations
26 but were able to reach an agreement (*Id.*, ¶10.) During the mediation, each of the Parties, represented by
27 its respective counsel, recognized the risk of an adverse result in the Action. (*Id.*) Parties continued to
28 work toward settlement with the assistance of Mr. Smith. (Setareh Decl., ¶ 9) The Parties reached a

1 tentative agreement and executed a memorandum of understanding on April 15, 2022. The Parties later
2 jointly prepared, memorialized, finalized, and executed the terms of the Joint Stipulation of the Class
3 Action Settlement on November 22, 2022. (Setareh Decl., Ex 1.)

4 **E. REASONABLENESS OF THE SETTLEMENT**

5 Plaintiff's counsel believe that the Settlement is in the best interest of the class members based on
6 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
7 extensive settlement negotiations. (Setareh Decl., ¶¶ 6-9.) Plaintiff's counsel balanced the Settlement
8 against the probable outcome of class certification, liability, the range of recovery at trial, the risks of losing
9 class certification, losing at trial, or not recovering as much as provided by the proposed Settlement, as
10 well as the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and
11 the various possible delays and appeals. (*Id.*, ¶¶12-13.) Although Defendants contend they have no
12 liability in this case, Defendants' counsel share Plaintiff's counsel's belief that the Agreement represents
13 a fair, reasonable and adequate settlement given the respective risks associated with the Action.
14 (Settlement, ¶ 77.)

15 **IV. DESCRIPTION OF THE SETTLEMENT**

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

17 If the Court ultimately does not grant final approval of the Settlement or grants final approval
18 conditioned on any material change to the Settlement that is not agreed to by the Parties, then either Party
19 will have the unilateral right to void the Settlement in accordance with the Settlement. (Settlement, ¶¶ 47
20 and 78.)

21 Defendants have agreed not to contest the certification of the Class for the sole purpose of
22 effectuating this Settlement. (Settlement, ¶ 78.) Should the Settlement be voided by any Party pursuant to
23 this Agreement, or not approved by the Court, or should the Judgment not become Final, the certification
24 of the Class for settlement purposes will be deemed null and void; and the fact that Defendants were willing
25 not to contest class certification as part of the Settlement will have no bearing on, and will not be admissible
26 in connection with, the issue of whether the Class should be certified in a non-settlement context in the
27 Action or any other action. (*Id.*)

28 ///

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

2 The Parties have stipulated to the appointment of Shaun Setareh, David Keledjian of Setareh Law
3 Group as Settlement Class Counsel (“Class Counsel”). (*Id.*, ¶ 5.)

4 **C. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

5 The Parties have agreed to the appointment of ILYM Group to administer the Settlement and to
6 provide notice to the Class Members (the “Settlement Administrator” or “Claims Administrator”).
7 (Settlement, ¶¶ 3 and 28.) Plaintiff estimates that settlement administration costs will not exceed **\$26,000.**
8 (*Id.*)

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

10 The Settlement Class is defined as “all individuals employed by Defendants STRAUCH &
11 COMPANY, CAMERON PARK PETROLEUM, INC., STRAUCH BROTHER INCORPORATION,
12 STRAUCH MANAGEMENT, LLC, LINDA PETROLEUM, INC., M&M FUELS, INC., RANCHO
13 CONVENIENCE CENTER, INC., WOODCREEK OAKS PETROLEUM, INC., MARC B. STRAUCH,
14 and MATTHEW C. STRAUCH (collectively "Defendants") who performed work for any of said Defendants
15 in hourly or non-exempt positions in California on or after November 24, 2016 through February 4, 2022.”
16 (Settlement, ¶ 4.)

17 Defendant estimates that there are approximately 51,000 workweeks applicable to Class Members
18 during the Settlement period. (Settlement, ¶ 12.) If the number of workweeks is more than 12% greater,
19 then at Defendants' sole option, either: (a) the Class Settlement Amount shall be augmented by Defendant in
20 proportion to the amount by which the total workweeks figure increased above 12%; or (b), notwithstanding
21 the definition of "Class Period" in Paragraph 6 of the Settlement, the Class Period end date shall be adjusted to
22 be the date on which the total workweeks figure rose to 57,121 workweeks. (Settlement, ¶ 12.)

23 **E. SCOPE OF THE RELEASE**

24 1. Release of Claims by Participating Class Members. Upon the entry of an order by the
25 Court granting final approval of this Settlement, and except as to such rights or claims as may be created
26 by this Agreement, the Settlement Class (including Plaintiff) and each Participating Class Member who
27 has not properly submitted a timely and valid request to “opt-out” or be excluded from the Action, and
28

1 without the need to manually sign a release document, in exchange for the consideration recited in this
2 Agreement (whether later received or not), on behalf of himself or herself and on behalf of his/her current,
3 former, and future heirs, executors, administrators, attorneys, agents, successors and assigns, shall hereby
4 fully, finally and forever waive, release, relinquish and discharge Defendants and respective affiliates,
5 subsidiaries, parent companies, respective successors and predecessors in interest, related companies,
6 partners, officers, directors, managers, servants, agents, past or present officers, directors,
7 shareholders, principals, heirs, representatives, accountants, auditors, consultants, insurers and
8 reinsurers, employees, former employees, representatives, and attorneys, past or present, and all
9 persons acting under, by, through, or in concert with any of them, if any (collectively hereinafter the
10 "Releasees"), for all actions, causes of action, rights, liabilities, obligations, costs, expenses, damages,
11 losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys' fees and costs), in
12 law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, based on or
13 reasonably related to any act, omission, event, occurrence, or non-occurrence of said event alleged in
14 Plaintiff's operative Complaint and/or PAGA Notice which occurred during the Class Period, or which
15 could have been alleged arising from the same set of operative facts alleged in the operative Complaint
16 in the Lawsuit, including but not limited to: (i) all claims for meal period violations; (ii) all claims for
17 rest break violations; (iii) all claims for unpaid hourly wages; (iv) all claims for unpaid overtime; (v)
18 all claims for the failure to timely pay wages during employment based on the preceding claims; (vi)
19 all claims for wage statement violations based on the preceding claims; (vii) all claims for the failure
20 to timely pay wages upon termination based on the preceding claims; (viii) all claims asserted through
21 California Business & Professions Code §§ 17200, *et seq.* based on the preceding claims; (ix) and all
22 claims asserted through the Labor Code Private Attorneys General Act, California Labor Code §§
23 2698, *et seq.* based on the preceding claims. (Settlement ¶¶ 24-25.) The claims set forth in this
24 Paragraph hereinabove shall be collectively referred to as the "Released Claims." Plaintiff will send a
25 letter to the LWDA to provide notice of this Settlement.

26 Release of PAGA claims by Plaintiff and PAGA Employees. Plaintiff, in his capacity as proxy
27 for the State of California and/or the LWDA, and as a private attorney general acting on behalf of himself
28 and the PAGA Employees, and each of the PAGA Employees, shall be deemed to have, and by operation

1 of the Order of Final Approval of Settlement and Judgment entered by the Court shall have, fully, finally
2 and forever released, relinquished and discharged the Releasees from all claims arising during the PAGA
3 Period seeking civil penalties under the Private Attorneys General Act, California Labor Code section
4 2698, et seq., that Plaintiff in his capacity as proxy for the State of California and/or the LWDA, to the
5 maximum extent permitted by law, and as a private attorney general acting on behalf of himself and the
6 PAGA Employees, asserted or could reasonably have asserted based on the facts alleged in the Action, the
7 LWDA letter, and/or the Amended LWDA letter, including but not limited to all such claims arising under
8 the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 212, 215,
9 216, 218.6, 223, 225, 226, 226.6, 226.7, 354, 408, 510, 512, 553, 558, 1175, 1194, 1194.2, 1197, 1197.1,
10 1198, 1199, 2802, 2698 and 2699, et seq., as alleged in the Complaint) and the wage orders of the
11 California Industrial Welfare Commission and any other Labor Code section or Wage Order based on the
12 facts alleged in the Action. Collectively, these claims shall be referred to as the “PAGA Released Claims.”
13 This release shall release all PAGA Released Claims by or on behalf of Plaintiff and all PAGA Employees
14 through the end of the PAGA Period and for the entire PAGA Period regardless of whether Plaintiff and/or
15 a PAGA Employee negotiates their/his/her settlement checks sent pursuant to this Settlement and
16 regardless of whether any such PAGA Employee opts out and excludes himself or herself from the
17 Settlement. PAGA employees shall have no right to object to the PAGA Release, the PAGA Settlement
18 Amount or the PAGA Shares.

19 General Release of Claims by Plaintiff. Upon the Effective Date, Plaintiff will be subject to a
20 general release including a waiver of Civil Code Section 1542. (Settlement, ¶¶ 40-41.)

21 **F. SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT MONIES**

22 The Settlement provides for a GSA of **\$2,700,000.00**. (*Id.*, ¶ 12.) The GSA is the maximum total
23 amount that Defendants will be required to pay for all claims of the Plaintiff and Class Members that are
24 alleged and includes. (*Id.*) Enhancement payment to the Class Representative, all amounts payable to the
25 Labor and Workforce Development Agency (“LWDA”) and the PAGA Employees as PAGA penalties,
26 all Court-approved attorneys’ fees of Class Counsel, all Court-approved costs and expenses incurred or
27 advanced by Class Counsel related to the Action, the fees and costs of the Claims Administrator. (*Id.*)
28 The GSA does not include the employer’s share of payroll taxes on the wage portion of the individual

1 settlement payments distributed to the Class Members. (*Id.*) This is a non-reversionary settlement and
2 none of the GSA will revert to Defendants, with the funds of checks uncashed by Class Members after
3 180 days of their mailing being directed to the California State Controller’s Unclaimed Property Fund.
4 (*Id.*, ¶12.)

5 **G. CLASS MEMBER SETTLEMENT PAYMENT FORMULA**

6 The Parties have agreed to a settlement formula which allocates settlement amounts to Class
7 Members on a *pro rata* basis, based on their number of workweeks and pay periods during Settlement
8 Period. (*Id.*, ¶ 70.) Individual Settlement Payments – the individual amount paid to a Participating Class
9 Member from the NSA – is allocated 30% to wages (for which employment taxes will be deducted and
10 IRS Forms W-2 issued), and 70% as penalties and interest (for which no taxes will be deducted and IRS
11 Forms 1099 will be issued). (*Id.*, ¶ 34(a).) The amount paid to aggrieved employees from the \$50,000
12 PAGA portion of the NSA – will be allocated 100% to penalties (for which IRS Forms 1099 will be
13 issued). (*Id.*)

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

16 Within 20 days of Preliminary Approval, Defendants will provide confidential and password
17 protected electronic database with the full names of all Class Members, last known mailing address, Social
18 Security number and Defendants’ employee identification number (“Class Members’ Data”). (*Id.*, ¶50.)
19 The Class Members’ Data will provide a figure indicating the total number of Work Weeks during the
20 applicable Class Period in which that Class Member performed any work for Defendants as an hourly,
21 non-exempt employee (“Individual Work Weeks”), the total number of payroll periods during the PAGA
22 Period that each PAGA Employee received a paycheck. (*Id.*, ¶50.)

23 **(a) Settlement Shares to the Participating Class Members**

24 The Settlement Administrator will first calculate each Class Member’s Settlement Ratio by
25 dividing that Participating Class Member’s Individual Work Weeks during the Class Period by the
26 aggregate total of all Participating Class Members’ Individual Work Weeks during the Class Period. (*Id.*,
27 ¶ 34(c).)

28 **(b) PAGA Settlement Amount, Payment to the LWDA, PAGA Shares**

1 The Parties agree to allocate **\$200,000** of the GSA for settlement of claims for civil penalties under
2 PAGA, Labor Code § 2699, *et seq.* (the “PAGA Settlement Amount”) (*Id.*, ¶15.) Pursuant to Labor Code
3 section 2699(i), 75% of that amount (**\$150,000**) will be paid to the LWDA. (*Id.*) The remaining 25%
4 (**\$50,000**) will be distributed to PAGA Employees on a *pro rata* basis according to the number of pay
5 periods they worked during the PAGA Period (the “PAGA Share”). (*Id.*, ¶¶ 15 and 34(d), 20(C).)

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

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

17 Within 20 calendar days of Preliminary Approval, Defendants will provide the Class Members’
18 Data to the Claims Administrator. (Settlement, ¶ 50.) The Class Members’ Data will be a confidential
19 and password protected electronic database with the full names of all Class Members, last known mailing
20 address, Social Security number, Defendants’ employee identification number, and indicating the total
21 number of Work Weeks during the applicable Class Period the Class Member worked. (*Id.*, ¶ 50.) Upon
22 receipt of the Class Members’ Data, the Claims Administrator will run the data through NCOA database
23 to obtain current address information. (*Id.*, ¶ 51.) Within 20 business days after receiving the Class
24 Members’ Data from Defendants, the Claims Administrator will mail a Notice Packet to all Class Members
25 via First-Class U.S. Mail, using mailing address provided by Defendants or an updated address if the
26 Settlement Administrator obtained one during the administration process. (*Id.*, ¶ 51(a).) Prior to mailing,
27 the Claims Administrator will perform a search based on the National Change of Address Database for
28

1 information to update and correct for any known or identifiable address changes. (*Id.*, ¶ 51.)

2 If a Class Notice is returned because of an incorrect address, the Claims Administrator will
3 promptly search for a more current address for the Class Member and re-mail the Class Notice to the Class
4 Member. (*Id.*, ¶ 51(b).) The Claims Administrator will use the Class Members' Data and otherwise work
5 with Defendants' Counsel and Class Counsel to find a more current address. (*Id.*) The Claims
6 Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job
7 parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class
8 Notice is returned by the U.S. Postal Service as undeliverable. (*Id.*) These reasonable steps will include
9 the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding
10 address; and promptly re-mailing to Class Members for whom new addresses are found. (*Id.*)

11 **I. OBJECTIONS AND EXCLUSION**

12 Other than with respect to the PAGA related claims, a Class Member may request to be
13 excluded from this Settlement by timely mailing a letter to the Claims Administrator via U.S. Mail,
14 stating that the Class Member wants to be excluded from this Action. (*Id.*, ¶ 52.) This opt-out letter
15 must include the Class Member's name, address, telephone number, and signature. To be valid and
16 timely, the request to be excluded must be postmarked by no later than sixty (60) days from the initial
17 mailing of the Class Notice by the Claims Administrator. (*Id.*) A Class Member who opts-out will only
18 be bound by the PAGA Released Claims and will only receive a PAGA Share. (*Id.*)

19 A Class Member who has not opted-out of the Settlement ("Participating Class Member") may
20 submit a written objection to the Claims Administrator. (*Id.*, ¶ 53.). The written objection must be
21 faxed or postmarked, if mailed, within 60 days after the mailing of the Class Notice. (*Id.*) To be valid,
22 the written objection must state the objecting Class Member's full name, address and telephone number,
23 the written basis for each specific objection in clear and concise terms and any legal support for the
24 objection, and must be signed by the Class Member or their legal representative. (*Id.*)

25 **J. NOTICE AND PAGA PAYMENT TO THE LWDA**

26 The Settlement provides for a total amount of **\$200,000** in settlement of all claims for civil
27 penalties under PAGA. (*Id.*, ¶ 15.), Pursuant to Labor Code section 2699(i), 75% of the PAGA settlement
28 amount, or **\$150,000**, will be paid to the LWDA. (*Id.*) The remaining 25%, or **\$50,000**, will be included

1 in the NSA and distributed only to the Class Members who worked for Defendants during the PAGA
2 Period. (*Id.*, ¶¶ 15, 34(d).) In connection with Settlement approval, Class Counsel must notify the LWDA
3 of the Settlement’s existence. This settlement was forwarded to the LWDA by Class Counsel. (Setareh
4 Decl., ¶ 16.)

5 **V. ARGUMENT**

6 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
7 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS**
8 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF**
9 **CIVIL PROCEDURE SECTION 382**

10 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
11 numerous and ascertainable class with a well-defined community of interest among its members” and a
12 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
13 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question
14 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*
15 at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification
16 question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable
17 to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In ruling on a
18 certification motion, a trial court’s task is to determine “whether...the issues which may be jointly tried,
19 when compared with those requiring separate adjudication, are so numerous or substantial that the
20 maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Id.*

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

28 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
Lambert Group, Inc. (2d Cir. 1992) 960 F.2d 285, *cert. dismissed*, 506 U.S. 1088, 122 L. Ed. 497, 113 S.

1 Ct 1070 (1993), the parties entered into a tentative settlement before a class was certified. After a hearing,
2 the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289;
3 *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 ("the use of the
4 tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), *cert.*
5 *denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation
6 and an approved procedure which ought to be followed in this case. *See Newberg on Class Actions* (3d ed.
7 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) § 30.45.

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

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

11 A class is ascertainable when it may be readily identified via an objectively stated definition
12 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126
13 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action. *Hebbard v.*
14 *Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a class of as few
15 as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here, the Settlement
16 Class is made up of about 2,931 individuals, all of whom may be readily ascertained by reference to
17 Defendants' personnel records. (Settlement, ¶ 28.) Accordingly, the Settlement Class is not only
18 ascertainable but also sufficiently numerous.

19 **2. Predominance of Common Questions**

20 A question of law or fact is common to the members of a class if it may be resolved through
21 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
22 concept, and 'the necessity for class members to individually establish eligibility and damages does not
23 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (quoting *Reyes v. San*
24 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not render
25 class certification inappropriate so long as such issues may effectively be managed." *Id.* This is especially
26 so where the key difference between class members solely concerns their respective amounts of damages.
27 *See id.* As a general rule, if a defendant's liability can be determined by facts common to all members, a
28

1 class will be certified even if the members must individually prove their damages. *See Hicks v. Kaufman*
2 & *Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

3 In this case, the Settlement Class meets these requirements. Plaintiff submits that Defendants'
4 liability arises from the same set of facts and legal questions that apply to and are answered equally as to
5 all Class Members. Plaintiff alleges Class Members were subjected to a common practice in that
6 Defendants: failed to pay them, *inter alia*, wages and overtime, or missed rest and meal periods, including
7 premiums (FAC, *passim*.)

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

10 3. Typicality of Plaintiff's Claims

11 Typicality "requires a showing that the class representative has claims or defenses typical of the
12 class." *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
13 "the nature of the claim or defense of the class representative, and not to the specific facts from which it
14 arose or the relief sought." *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
15 citations omitted). "The test of typicality 'is whether other members have the same or similar injury,
16 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class
17 members have been injured by the same course of conduct.'" *Id.* (quoting *Schwartz v. Harp* (C.D. Cal.
18 1985) 108 F.R.D. 279, 282; *accord Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 ("it has never been
19 the law in California that the class representative must have *identical* interest with the class members").

20 Under these standards, Plaintiff's claims are typical of those of the class members. Like Class
21 Members, Plaintiff was an hourly non-exempt employee of Defendants in California. (Setareh Decl., ¶
22 14.) Plaintiff alleges that he and the putative class members was not paid all wages and overtime owed,
23 was not provided with compliant meal and rest breaks, and did not receive accurate wage statements. (*Id.*)
24 *See Classen, supra*, 145 Cal.App.3d at 46 (representative plaintiffs need not have all claims or identical
25 interests with class members; they need only have claims that are "typical of the class"); *see also B.W.I.*
26 *Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1347 (representative plaintiffs need
27 not suffer all of the exact same damages as every class member). Accordingly, Plaintiff pursues claims
28 typical of the class he seeks to represent.

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

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

7 In this case, Plaintiff has no conflict of interest with absent Settlement Class Members and has
8 agreed to place the class’s interests above his own. (Setareh Decl., ¶ 14) See *Global Minerals, supra*, 113
9 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended to uncover any
10 conflicts between the plaintiff and the class he or she seeks to represent). Plaintiff’s counsel, Setareh Law
11 Group, is experienced in wage and hour class action litigation and has no conflicts of interest with absent
12 Class Members. (Setareh Decl., ¶¶ 3-5.) Thus, this Court should appoint Plaintiff as Class Representative
13 for the Settlement Class and appoint his counsel as Class Counsel.

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

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

27 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
28 California. A two-step process is required. First, the court preliminarily approves the settlement and the

1 class members are notified as directed by the court. Cal. Rule of Court 3.769(c)-(f). “The notice must
2 contain an explanation of the proposed settlement and the procedures for class members to follow in filing
3 written objections to it and in arranging to appear at the settlement hearing and state any objections to the
4 proposed settlement.” Cal. Rule of Court 3.769(f). Second, the court conducts a final approval hearing to
5 inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If the court approves
6 the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the
7 judgment. Cal. Rule of Court 3.769(h).

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

18 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
19 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS FAIR,**
20 **ADEQUATE, AND REASONABLE**

21 **1. Settlement Resulted From Serious, Informed, Non-Collusive Negotiations**

22 The Parties reached this settlement only after they conducted extensive and protracted arm’s-
23 length negotiations through an experienced and knowledgeable mediator, Todd Smith (Setareh Decl., ¶
24 9-10.) The Parties have not engaged in any collusion or improper negotiations. (*Id.*)

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

27 ¹ The California Supreme Court has suggested that trial courts, in the absence of controlling California
28 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
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
2 As discussed above, Plaintiff's counsel engaged in extensive investigation as well as formal and
3 informal written discovery that has allowed them to evaluate the merits of the Class Members' claims and
4 Defendants' defenses as well as the range of possible recoverable damages. (*Id.*, ¶¶ 6-10.) Based on
5 Plaintiff's counsel's investigation and discovery, Plaintiff and his counsel are of the opinion that this
6 settlement is fair, reasonable, adequate, and in the Class Members' best interest. Plaintiff's counsel's
7 investigation and discovery is more than sufficient to warrant their and Plaintiff's decision to enter into the
8 Settlement. (*Id.*)

9 Plaintiff and Defendants engaged extensively in informal discovery prior to resolving the Action.
10 Specifically, the Parties engaged in an informal, voluntary exchange of information in the context of
11 privileged settlement discussions to facilitate an early mediation. Defendants produced volumes of records
12 and documents. Defendant produced a sample of payroll records for the class containing data entries, and
13 copies of its relevant company written policies. These records allowed Plaintiff to calculate average pay
14 rate among the Class Members, as well as analyze the potential liability of Defendants. Plaintiff hired an
15 expert to analyze the produced data with respect to potential damages and penalties in preparation for
16 mediation. From the data and other documents obtained from Defendant pertaining to the Class and
17 Defendant's policies, Plaintiff's expert was able to analyze the data sampling, and Plaintiff was then able
18 to thoroughly assess the merits of each claim.

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

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

23 Plaintiff's counsel believes that the one-third of the GSA that they will seek in attorneys' fees are
24 appropriate in this matter. (*Id.*, ¶ 18.) The Court of Appeal has recognized that one factor supporting a
25 lodestar multiplier is comparison to the fees typically earned in contingency fee litigation where the
26 plaintiff's attorney is awarded fees based on a percentage of the award recovered for the client: "to ensure
27 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
28 litigation." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court knows,

1 contingency fees typically range from one-third to forty percent. Indeed, Setareh Law Group has been
2 awarded one-third-common-fund attorneys' fees in numerous class actions. (Setareh Decl., ¶ 18.)

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

8 Counsel believe the proposed Settlement is fair, reasonable, and adequate in light of the
9 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable
10 recovery for the Settlement Class. (Settlement, ¶ 88.)

11 **4. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's**
12 **Case and the Risks and Costs of Further Litigation**

13 California courts recognize that "'the merits of the underlying class claims are not a basis for
14 upsetting the settlement of a class action.'" *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th
15 224, 246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th
16 1135, 1150). The settlement need not provide one hundred percent of the damages sought in order to be
17 judged reasonable. *Wershba*, 91 Cal.App.4th at 250. "Thus, even if 'the relief afforded by the proposed
18 settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is
19 not a bar to a class settlement because 'the public interest may indeed be served by a voluntary
20 settlement in which each side gives ground in the interest of avoiding litigation.'" *Id.* (quoting *Air Lines*
21 *Stewards v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

22 The following chart provides the estimated potential recovery on a class basis that Plaintiff
23 believes he could reasonably achieve *if he were to prevail on all his causes of action*²:

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

Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on time/payroll data provided by Defendants) Class Count: 2,931; Number of Shifts: 51,000 Average Rate of Pay: \$14.00 Average Overtime Rate of Pay: \$21.00 Pay periods within Wage Statement period: Formerly Employed Class Members: 1,605 Class Members in the 226/PAGA Period (1 year limitations period): 1,210 Pay periods for 1-year Class Members: 2,900		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Unpaid Overtime	\$535,500.00	.5 hours a shift x 51,000 shifts x \$21.00/hour
Rest Period Premiums	\$714,000	\$14 x 51,000 shifts
Meal Period Premiums	\$714,000	14 x 51,000 shifts
Sub-Total Unpaid Wages	\$1,963,500.00	
Labor Code § 203 Penalties	\$5,392,800	1,605 former employees x 8 hours x 30 days x \$14/hour
Labor Code § 226 Penalties	\$229,500	1,210 initial violations at \$50, and 1,690 subsequent violations at \$100
TOTAL	\$7,585,800.00	
PAGA Penalties	\$290,000	
<i>Total if PAGA included</i>	<i>\$7,875,800</i>	

(Setareh Decl., ¶ 11)

Despite a total potential recovery of a little more \$7 million on all class claims, including statutory

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 penalties, Plaintiff recognizes the challenges he faces in certifying a class action and establishing liability
2 on the wage and hour claims. (*Id.*, ¶ 12.) Plaintiff estimates that his likelihood of prevailing on all his
3 causes of action are extremely low and thus his likelihood of recovering \$7 million or anything close to
4 that amount on behalf of a class is very unlikely. (*Id.*) For those claims, if any, that are certified for class
5 treatment, Plaintiff must prevail at a trial on the merits. (*Id.*) In addition to having to prove that Plaintiff
6 and other workers were not paid for all hours worked, Plaintiff must establish willfulness with respect to
7 his waiting time penalties claim under Labor Code Section 203. (*Id.*)

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

11 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid overtime
12 wages. See *Duran v. US Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 ("*Duran*"), citing *Dilts v.*
13 *Penske Logistics* (S.D. Cal. 2014) LLC 2014 WL 205039 (dismissing certified off-the-clock claims
14 based on proof at trial).

15 (ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide
16 compliant meal and rest breaks; or that to establish liability for the failure to provide compliant meal and
17 rest breaks would require an individualized inquiry that would prevent these issues from being resolved
18 on a class and/or collective basis. Plaintiff alleged employees were regularly not provided uninterrupted
19 meal and rest breaks.

20 (iii) The risk that Plaintiff would not recover waiting time and wage statement penalties
21 pursuant to Labor Code sections 203 and 226. For example, Plaintiff might not prove that Defendants
22 acted with the intent necessary for the alleged claims for penalties under Labor Code sections 203 and
23 226. For example, there is currently a split of authority as to whether such penalties can be obtained
24 based on failure to provide rest breaks. See, e.g., *Singletary v. Teavana Corporation* (N.D. Cal. May 2,
25 2014) 2014 WL 1760884, *4 (noting that "the law in this area is murky at best" and holding that section
26 203 penalties are not applicable to meal and rest break claims). Specifically, section 203 requires that a
27 plaintiff show the employer committed a "willful" violation of the law in withholding wages. "A good
28 faith dispute that any wages are due will preclude imposition of waiting time penalties under Section

203.” 8 Cal. Code Regs. § 13520. Similarly, penalties pursuant to section 226 require a “knowing and intentional” violation. Defendants contends that it would present several good faith defenses that would preclude a finding of willfulness under section 203. *See Choate v. Celite Corp.* (2013) 215 Cal. App.4th 1460 (reversing award of section 203 penalties based on good faith defense where underlying wage claim presented issue of first impression). Any such good faith dispute could preclude penalties.

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

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

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

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

(viii) Although the PAGA penalties calculated by Plaintiff amounts to an extravagant \$290,000, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as to the amount

1 of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: “In any action by
2 an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
3 may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the
4 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
5 arbitrary and oppressive, or confiscatory.” Subdivision (a) states, “Notwithstanding any other provision
6 of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies,
8 or employees, for a violation of this code, may, as an alternative, be recovered through a civil action
9 brought by an aggrieved employee on behalf of himself or herself and other current or former employees
10 pursuant to the procedures specified in Section 2699.3.” Subdivision (f) specifies the penalties in instances
11 where the underlying statute does not specify any civil penalty. In other words, where the facts and
12 circumstances of the particular case demonstrate that an unreduced award would be “unjust, arbitrary and
13 oppressive, or confiscatory,” the court (or arbitrator) may reduce the award so as to ameliorate any such
14 finding.

15 In these respects, Defendants strongly denies any liability and the propriety of class certification
16 for any reason other than settlement. Continued litigation of this lawsuit presented Plaintiff and
17 Defendants with substantial legal risks that were (and continue to be) very difficult to assess.

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

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

27 “The notice given to the class must fairly apprise the class members of the terms of the proposed
28 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan Ass’n*

1 (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to decide
2 whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must strike a
3 balance between thoroughness and the need to avoid unduly complicating the content of the notice and
4 confusing class members. *Wershba*, 91 Cal. App. 4th at 252. Furthermore, an appropriate notice is one
5 which has a reasonable chance of reaching the class members. *Cartt v. Superior Court* (1975) 50
6 Cal.App.3d 960, 974.

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

14 The Parties’ proposed plan for directing notice to the Class is also the best notice that is practicable
15 under the circumstances. Using last-known addresses provided by Defendants, the Settlement
16 Administrator will send the Notice by First Class U.S. Mail to all Class Members. (Settlement, ¶ 51.)
17 Further, the Settlement Administrator will take reasonable steps to obtain the correct address of any Class
18 Members for whom the Notice is returned as undeliverable before attempting to re-mailing including
19 performing address searches. (*Id.*)

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

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

28 ///

1 **VI. CONCLUSION**

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

7
8 DATED: February 15, 2023

SETAREH LAW GROUP

9
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