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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO-CENTRAL DIVISION

13 CHARLES CRAFT, an individual in his
14 representative capacity on behalf of all
Aggrieved Employees,

15 Plaintiffs,

16 v.

17 UAG ESCONDIDO M1, Inc., *et al.*, and
18 DOES 1 through 50,

19 Defendants.

) Case No.: 37-2021-00000982-CU-OE-CTL

)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES ISO PLAINTIFFS'**
) **MOTION FOR PRELIMINARY**
) **APPROVAL OF CLASS SETTLEMENT**
) **AND FOR AN ORDER: (1)**
) **PRELIMINARILY APPROVING CLASS**
) **ACTION SETTLEMENT; (2) DIRECTING**
) **DISTRIBUTION OF NOTICE OF**
) **SETTLEMENT; AND (3) SETTING A**
) **HEARING FOR FINAL APPROVAL OF**
) **CLASS ACTION SETTLEMENT**

) Hearing Date: October 1, 2021

) Time: 9:00 a.m.

) Dept.: 75

) Judge: Hon. Richard Straus

) **[[Prop.] Order, Not. of Mot., and Decs. of**
) **Thomas D. Rutledge & Ian Pancer filed**
) **concurrently herewith]**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiff Charles Craft (the “Named Plaintiff”) on behalf of himself and others (collectively
4 “Plaintiffs”), respectfully submit this brief in support of Plaintiffs’ unopposed Motion for
5 Preliminary Approval of Class Action Settlement. Plaintiffs and Defendants UAG Escondido M1,
6 Inc. and Penske Automotive Group, Inc. (Defendants) have reached a full and final settlement,
7 terms of which are specified in the Class Action Settlement and Agreement (Settlement Agreement),
8 a copy of which is attached as Exhibit 1 to the Declaration of Thomas D. Rutledge (Rutledge Decl.)
9 served and filed herewith.

10 Without admitting wrongdoing, Defendants agree to pay the putative Class the non-
11 reversionary sum of \$575,000 in exchange for a release subject to Court approval. This amount is
12 inclusive of: (1) individual settlement payments to putative class members of the Settlement; (2)
13 Class Representative incentive award of \$15,000 to Plaintiff Charles Craft; (3) \$20,000 to resolve
14 Plaintiffs’ Private Attorney General Act (“PAGA”) claim for penalties, 75% of which is payable to
15 the Labor and Workforce Development Agency (“LWDA”) and the remaining sum payable to the
16 PAGA Members; (4) Settlement Administrator costs up to \$35,000 (actual cost is \$20,000 see
17 below); (5) putative Class Counsel’s fees not to exceed 1/3 of the gross settlement (\$191,667); and
18 (6) putative Class Counsel’s reasonable costs. In addition, Defendants agree to pay the employer's
19 portion of payroll taxes on settlement payments attributed as wages. Uncashed checks are payable to
20 Hire Heroes, USA, a nonprofit organization whose stated purpose is to help U.S. veterans obtain
21 employment.. (Rutledge Decl., Ex. 1, pp. 3, 9-11.)

22 **II. THE PARTIES.**

23 **A. The Defendants.**

24 Defendant Penske Automotive Group, Inc. is the parent company of a number of automotive
25 companies in California. Defendant UAG Escondido M1, Inc. is Defendant Penske Automotive
26 Group, Inc.’s subsidiary, and was Plaintiff Craft’s employer. As its name implies, Defendant UAG
27 Escondido M1, Inc.’s dealership is in Escondido, California. (Rutledge Decl., ¶¶ 6, 7.)
28

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1 **B. The Named Plaintiff.**

2 From about August 21, 2019 to November 25, 2019, Defendants employed Plaintiff Craft as
3 a porter whose job was generally to drive vehicles around the car lot in Escondido so that customers
4 could view and test drive them. Plaintiff was a nonunion employee paid on an hourly basis.
5 (Rutledge Decl., ¶¶ 4, 5.)

6 **C. The Putative Class.**

7 The putative Class consists of all persons Defendants employed in California as non-exempt
8 employees from October 19, 2019 to the date of preliminary approval of the Settlement (putative
9 Class Period). As of the date of mediation approximately five months ago, there are approximately
10 3,222 putative Class Members who worked approximately 73,448 pay periods. Because the PAGA
11 and Class Periods generally overlap, the Settlement Agreement does not provide for a subclass for
12 Aggrieved Employees under PAGA since it is unnecessary. (Rutledge Decl., ¶¶ 6-11.)

13 **III. FACTS AND PROCEDURAL HISTORY.**

14 On November 18, 2019, after significant prelitigation case investigation, Plaintiff Craft, via
15 counsel, sent a letter via certified mail to the Defendants and via online submission to the LWDA to
16 exhaust administrative remedies via PAGA. On January 8, 2021, Plaintiff Craft filed a representative
17 PAGA action alleging various wage and hour related claims against Defendants, including unpaid
18 overtime wage, unpaid regular/minimum wage, and erroneous wage statement claims. (Rutledge
19 Decl., ¶¶ 12-18.)

20 Following a series of detailed discussions between the parties via counsel, counsel engaged in
21 open and frank discussions regarding the merits of this case, its strengths, and weaknesses. These
22 discussions led to the parties' agreement to attend private mediation. To this end, Defendants agreed
23 to provide Plaintiffs a sampling of employee data, pertinent employment policy documents, and
24 details concerning employee data, such as the number of employees employed during the putative
25 Class Period, information concerning rates of pay, number of workweeks and pay periods, among
26 other material facts. (Rutledge Decl., ¶¶ 19-21.)

27 Defendants subsequently complied with their agreement by providing Plaintiffs with: (i) the
28 total number of putative Class members; (ii) a sampling of wage statements and timesheets for the

1 putative class; (iv) pertinent employment policy documents; (v) the total number of workweeks and
2 pay periods nonexempt employees worked during the Class and PAGA periods; (vi) the total number
3 of nonexempt employees who worked during the Class and PAGA periods; and Plaintiffs' Counsel
4 and various staff members reviewed the foregoing records and data and made an assessment
5 regarding a potential range of the overall unpaid wages owed to the putative Class. (Rutledge Decl.,
6 ¶¶ 22-24.)

7 On April 20, 2021, the parties via Zoom attended private mediation before Ms. Jill Sperber,
8 Esquire of Judicate West. The mediation lasted all day, but the parties were unable to reach an
9 agreement. Instead, Ms. Sperber made a mediator's proposal, which she gave the parties one week to
10 accept. In the end, after an arm's-length settlement process, the parties accepted Ms. Sperber's
11 settlement proposal. (Rutledge Decl., ¶¶ 25-27.)

12 From about May 1, 2021 to September 1, 2021, the parties negotiated the details of the
13 settlement resulting in the Settlement Agreement. On September 8, 2021, the parties entered a
14 stipulation to permit Plaintiff Craft to file a First Amended Complaint (FAC), the stipulation of which
15 Defendants filed with the Court as of the date of this filing. Upon receipt of the Court's permission,
16 Plaintiffs will file the FAC, which will become the operative Complaint. (Rutledge Decl., ¶¶ 28-30.)

17 **IV. REASONS FOR SETTLEMENT.**

18 In reviewing class settlement agreements, California state court commonly evaluate the
19 factors addressed in the seminal case *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.
20 These factors are:

21 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely
22 duration of further litigation, the risk of maintaining class action status
23 through trial, the amount offered in settlement, the extent of discovery
24 completed and the stage of the proceedings, the experience and views of
25 counsel, the presence of a governmental participant, and the reaction of
26 the class members to the proposed settlement.

27 (*Kullar, supra*, at 128.)

28 These factors are well established here. Through the course of this litigation, Plaintiffs
reviewed hundreds of pages of documents, including employment policies, pay statements, and time
records, in preparation for mediation, certification and, if necessary, trial. From this, Plaintiffs'

1 Counsel was able to determine the strength of Plaintiffs' claims, the typical nature of the claims, and
2 the commonality of Plaintiffs' claims with those of other putative members of the Settlement Class.
3 At all times Defendants have denied and to this day continue to deny doing anything wrong except
4 for causing a few minor technical violations of the law for which they allege no one truly suffered
5 harm. (Rutledge Decl., ¶¶ 31-33.)

6 Before mediation, Defendants provided Plaintiffs with a sampling consisting of hundreds of
7 pages of documents, including pay plans, wage statements and time records, statistical information
8 concerning the various categories of employees and their pay, pertinent employment policies, and
9 information regarding the size of the Class and PAGA Group (including workweeks and pay
10 information). Plaintiffs' Counsel examined this evidence, which examination provided Plaintiffs'
11 Counsel valuable information regarding the strengths and weaknesses of Plaintiffs' claims.
12 (Rutledge Decl., ¶¶ 34-37.)

13 As described above, the case went through the private mediation process during which the
14 parties vetted their claims and defenses before an experienced private mediator. The private
15 mediator, Ms. Sperber, made a mediator's proposal giving the parties a week to think about it. One
16 week later, the parties accepted her proposal.

17 The case settled on the terms set forth in the Settlement Agreement in part because
18 Defendants believe that because of the substantial expense of litigating the Action, the length of
19 time necessary to resolve the issues presented herein, the inconvenience involved, and the
20 concomitant disruption to their business operations, that settlement was in their best interest.

21 The issues in the case are contested, and the evidence conflicting. Defendants deny any
22 wrongdoing, maintain their conduct was entirely lawful, and contend the violations, if any, were
23 trivial.

24 Whereas the Named Plaintiff alleges he used his personal cell phone to communicate with
25 the dealership while shuttling vehicles around the car lot, Defendants contend the Named Plaintiff's
26 cell phone use was rare and unnecessary, and that Defendants provided a two-way radio for the
27 Named Plaintiff to use, making the cell phone use optional and for the convenience of Plaintiff only.
28 Whereas Plaintiff claims he was unable to clock in due to the inaccessibility of the time clock early

1 in the morning, Defendants contend this alleged violation, if it took place at all, was confined to the
2 one dealership where the Named Plaintiff worked and to what they claim is a very limited number
3 of employees who arrive very early in the morning, before the dealership doors might all be
4 unlocked. Defendants contend that, to the extent employees may not be compensated for time
5 submitting to drug tests, they are not entitled to compensation for this time and, if they are, the time
6 spent is minimal. Plaintiffs alleged that Defendants neglected to accurately indicate the net pay on
7 Plaintiff's pay stubs, instead erroneously reporting his net pay as "0.00." Defendants contend,
8 however, the wage statements Plaintiff is relying on were not the actual statements issued to him -
9 or to Defendants' other employees – with their wages. Rather, Defendants claim the copies Plaintiff
10 points to were produced after the fact by a payroll company and turned over with the personnel file
11 – not the statements actually issued to Plaintiff contemporaneously with his wages. Furthermore, the
12 pay statements in the sampling Defendants produced do not suffer from the infirmity about which
13 the Plaintiff complains.

14 Essentially, Defendants maintain that the problems Plaintiff complains of did not happen, do
15 not happen anymore if they did, and are isolated events if they happened at all. Defendants have
16 denied and continue to deny generally each and all the claims and contentions alleged in the Action.
17 Nonetheless, Defendants have concluded that further litigation would be protracted and expensive,
18 and it is desirable that the Action be fully and finally settled in the manner and upon the terms and
19 conditions set forth in the Settlement Agreement. (Rutledge Decl., ¶¶ 38-41.)

20 To be more specific, Defendants maintain that the violations Plaintiffs allege Defendants
21 committed if they occurred at all, rarely occurred and when they did occur, happened only at a small
22 number of dealerships and were not companywide violations. Defendants likewise maintained that
23 class certification would be difficult due to excessive individual inquiries over where, how often,
24 and why the violations allegedly occurred. (Rutledge Decl., ¶¶ 42, 43.)

25 After the investigation undertaken and analysis performed by Plaintiff, through Class
26 Counsel, into the claims of the putative Class, the potential recovery, the sharply disputed factual
27 and legal issues involved in this litigation, the risks of continuing the litigation and potential
28 appellate issues in complex actions such as this, the difficulty of maintaining a class action, and the

1 meaningful payments members of the Settlement Class will receive because of this Agreement, that
2 settlement is in the best interest of the Settlement Class. This settlement is the result of extensive,
3 arms' length negotiations and is fair and reasonable to the Settlement Class. (Rutledge Decl., ¶¶ 44-
4 46.)

5 **A. Individual Settlement Payments are Very Good for Members of the Settlement**
6 **Class.**

7 Further supporting the settlement amount obtained is the meaningful payment Class
8 Members will receive. After deductions, the Net Settlement Amount will be approximately
9 \$328,333 to the Class. If this Honorable Court approves this Settlement Agreement, there are no
10 opt-outs, and there is a 100% participation rate (i.e., no opt-outs), members of the Settlement Class
11 will receive an average payment of about \$102 apiece (\$328,333/3,222). Of course, these numbers
12 are a rough estimate and are based on figures Defendants provided five months ago. The actual
13 number each member of the Settlement Class receives depends on the number of weeks that a
14 member worked, the number of opt-outs, additional workweeks added since the date of mediation,
15 among other things, but the end result of this settlement is very good for the Class. (Rutledge Decl.,
16 ¶¶ 75-78.)

17 Viewed in light of the overall damages Plaintiffs could have achieved if this case went to
18 trial, the recovery is good. In the proposed FAC, Plaintiffs allege seven class claims (minimum
19 wage, overtime, meal and rest break, Labor Code § 203, Labor Code § 226, Labor Code § 2802, and
20 B&P § 17200) and two PAGA only claims (sick pay and miscellaneous), yet according to
21 Defendants and the evidence Plaintiffs' Counsel examined these claims face substantial obstacles to
22 certification. Plaintiffs only alleged the B&P § 17200 class claim to extend the statute of limitations
23 to four years as a protective measure, but because Defendants settled a previously filed wage and
24 hour class action with a settlement period expiring on October 19, 2019, the proposed Class Period
25 only goes back to October 19, 2019 thus reducing this class claim to zero. (Rutledge Decl., ¶¶ 79-
26 82.)

27 After investigation and review of the sampling and pertinent written policies, Plaintiffs'
28 Counsel has concluded that a number of the alleged Labor Code violations alleged will be difficult

1 or impossible to prove. It is apparent that a number of Plaintiffs' class claims may have difficulty
2 obtaining certification, and therefore Plaintiffs have discounted their class claims accordingly. For
3 example, as to Plaintiff's Labor Code § 226 claim, after reviewing the sampling of pay statements,
4 none of which list "0.00" as the net pay, Plaintiffs' Counsel is gravely concerned about the ability to
5 prove the Labor Code § 226 violation. As for Plaintiffs' unpaid wage claim, insofar as it is based on
6 failure to pay for Plaintiff's time waiting for the door to be unlocked in the morning, this represents
7 only a tiny fraction of the hours worked by the class as a whole. (Rutledge Decl., ¶¶ 83-85.)

8 The same is generally true as to Plaintiffs' Labor Code § 2802 claim for the Named
9 Plaintiff's use of his personal cell phone for work purposes. According to the Defendants, the named
10 Plaintiff had no reason to use his personal cell phone because Defendants provided him a two-way
11 radio to communicate for work purposes. (Rutledge Decl., ¶¶ 86-88.)

12 As for Plaintiffs' meal and rest break claims, Defendants provided Plaintiffs' Counsel with
13 governing written policies that Defendants argue are lawful and enforceable. While some of the time
14 records appear to show evidence of missing "ins" and "outs" for meal breaks raising the question of
15 whether the employee actually took a meal break, Defendants argue here that its employees indeed
16 received all their meal breaks and that certification will be near impossible due to the nature of the
17 individualized inquiries Plaintiffs would need to conduct to prove that Class Members did not have
18 a meal. (Rutledge Decl., ¶¶ 89-91.)

19 As to Plaintiffs' class claims for Defendants' violations of Labor Code §§ 203 and 226, the
20 value for these claims is largely discounted by the sometimes unsurmountable legal requirements
21 that Plaintiffs must prove "willfulness" in connection with their Labor Code § 203 claim and
22 "injury" with respect to their Labor Code § 226 claim. These are not foregone conclusions.
23 Accordingly, Plaintiffs' Counsel substantially discounted the value of these claims. (Rutledge Decl.,
24 ¶¶ 92-94.)

25 Based on the foregoing, Plaintiffs believe the average recovery of more than \$100 per
26 putative Class Member is very good. Because the foregoing estimated payments to Settlement Class
27 Members are fair and reasonable, Plaintiffs very respectfully request the Court to approve the
28 Settlement. (Rutledge Decl., ¶¶ 95-96.)

1 **B. Settlement Administration Costs are Reasonable.**

2 The parties received a bid for settlement administration from Phoenix Settlement
3 Administrators (“Phoenix”), a neutral settlement administrator, for \$20,000. This estimate is
4 reasonable and will not exceed this amount per the bid Plaintiffs obtained. Plaintiffs very
5 respectfully request this Court to approve the appointment of Phoenix as the Settlement
6 Administrator. (Rutledge Decl., Exhibit 2, ¶¶ 97-99.)

7 **C. The Enhancement Award of \$15,000 to the Named Plaintiff is Reasonable.**

8 Courts frequently award service awards to named plaintiffs in putative class action
9 settlements to recognize their time and efforts, and the risks they undertake on behalf of the putative
10 class. Such payments are intended to advance public policy by encouraging individuals to come
11 forward and perform their civic duty in protecting the rights of the putative class, as well as to
12 compensate putative class representatives for their time, effort, and inconvenience. (See e.g., *In re*
13 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380 [court granted enhancement fees
14 awards in the amount of \$10,000 to the four named class representatives].)

15 While the details of Plaintiff Craft’s services will be briefed more fully when Plaintiffs file
16 their Motion Seeking Attorneys’ Fees and an Enhancement Award for the Plaintiff during the final
17 approval process, putative Class Counsel can attest that Plaintiff Craft spent considerable time
18 assisting counsel in this case. Plaintiff Craft communicated with Class Counsel substantially and
19 was an invaluable participant in this case. Plaintiff Craft risked having to succumb to extensive
20 discovery and to the payment of Defendants’ costs if he lost this case. Plaintiff Craft also assumed
21 the risk of negative opinion by future prospective employers from suing a former employer. Via this
22 settlement, Plaintiff Craft will cause members of the Settlement Class to receive money they
23 otherwise would not have received but for this litigation. Plaintiff Craft served a substantial role in
24 this litigation and has the right to receive an Enhancement Award. Defendants do not oppose the
25 requested Enhancement Award. Because the requested service payments are reasonable, Plaintiffs
26 very respectfully request the Court to approve the Enhancement Award. (Rutledge Dec., ¶¶ 100-
27 107.)
28

1 **D. Class Counsel's Proposed Fees and Costs are Reasonable.**

2 Putative Class Counsel seeks an uncontested award of fees not to exceed 1/3 of the gross
3 settlement and reasonable costs. Putative Class Counsel's fees are based on a percentage of the
4 overall settlement and can be crosschecked against Plaintiffs Counsel's lodestar. (See *Laffitte v.*
5 *Robert Half International Inc.* (2016) 1 Cal.5th 480 [California Supreme Court holding that 1/3 of
6 the gross settlement based on a percentage of the overall settlement amount is the benchmark];
7 *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133-1134 citing *Serrano v. Priest* (1977) 20 Cal.3d 25,
8 49 [lodestar approach to fees is a reasonable method in assessing the reasonableness of fees].) The
9 requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-
10 consuming litigation solely on a contingency basis. Further, the requests are in line with other
11 attorneys' fees awards in California for wage and hour putative class actions. As will be
12 demonstrated in Plaintiffs' Counsel's moving papers, which will be filed concurrently with
13 Plaintiffs' Motion for Final Approval, Plaintiffs' Counsel's requested fees are also consistent with
14 Counsel's lodestar. Because the requested fees are reasonable, Plaintiffs very respectfully request
15 the Court to approve these fees and costs. (Rutledge Decl., ¶¶ 108-112.)

16 **E. Putative Class Counsel is Well Qualified in These Types of Actions.**

17 Putative Class Counsel is experienced in wage and hour class action litigation. For more than
18 15 years, Class Counsel has devoted the majority of his practice to prosecuting PAGA wage and
19 hour cases and obtaining class certifications in a wide variety of wage and hour employment class
20 action cases. Before doing so, he served in the U.S. Navy Judge Advocate General's Corps serving
21 U.S. servicemembers as a Judge Advocate. (Rutledge Decl., ¶¶ 53-74.)

22 In the opinion of putative Class Counsel, the recovery for each member of the Settlement
23 Class is well within the standard amount for this type of action, particularly given the risks inherent
24 in further litigation. The settlement is favorable given that members of the Settlement Class will be
25 promptly compensated, rather than face uncertainties inherent in further litigation and waiting for
26 years of litigation to ensue. Based on all considerations, this settlement is highly favorable,
27 fundamentally fair, adequate, and a reasonable resolution of disputed issues and is in the best
28 interests of the Settlement Class. (Rutledge Decl., ¶¶ 31-52, 75-96.)

1 **V. PLAN OF ALLOCATION.**

2 **A. The Common Fund.**

3 Subject to Court approval, the Maximum Settlement Amount is the non-reversionary sum of
4 \$575,000, which is all-inclusive, including individual Class Member settlement amounts, the PAGA
5 Payment, the Class Representative Enhancement Award, Class Counsel Attorneys' Fees and Costs,
6 and the Settlement Administrator's expenses. (Rutledge Decl., Ex. 1 pp. 3, 9-11.)

7 **B. Administration of the Gross Settlement Fund.**

8 Duties of the Settlement Administrator will include processing and mailing payments to
9 Plaintiff, putative Class Counsel, and the putative Class, printing and mailing the Settlement Notices
10 to the putative Class, among other tasks agreed to in the Settlement Agreement or that the Court
11 orders the Settlement Administrator to perform. The Settlement Administrator will similarly track
12 down and locate the new and correct addresses for checks or notices returned in the mail. (Rutledge
13 Decl., Ex. 1, pp. 12-14.)

14 No later than 21 days after Preliminary Approval of this Settlement by the Court, Defendants
15 shall provide the Settlement Administrator with the Class Data. Thereafter, pursuant to the terms of
16 the Settlement Agreement, the Settlement Administrator shall mail the Notice Packet to the last
17 known address, according to Defendants' records, of each member of the Settlement Class via First
18 Class U.S. Mail. (Rutledge Decl., Ex. 1, pp. 13, 14.)

19 **C. Apportionment and Tax Reporting of Net Settlement Amount.**

20 The Settlement Payments are payments for all claims alleged in, or reasonably related to the
21 claims alleged in the FAC. One fifth (1/5) of each payment shall be deemed wages, as to which
22 legally required state and federal payroll deductions shall be taken and a W-2 Form issued. Four
23 fifths (4/5) of each payment shall be deemed penalties, these latter sums of which a Form 1099 shall
24 be issued. The Settlement Administrator is and will be responsible for computing, estimating,
25 withholding, and paying all appropriate amounts of federal, state, and local taxes. The Class
26 Administrator shall calculate the employer's share of payroll taxes, including FICA and FUTA, on
27 the wage portion of the settlement payments to the Class, for which the Defendants shall pay in
28 addition to the Settlement Fund attributed to wages. (Rutledge Decl., Ex. 1, p. 19.)

Settlement Awards to putative Class Members will be calculated by taking the Net Settlement Amount, divided by the total number of workweeks worked by all members of the Class, multiplied by the total number of workweeks worked by each individual member of the Class. Any person who opts out of the Settlement is not a Class Member and is ineligible to object to the Settlement or to participate in the Settlement. The first installment of Settlement Payments to the putative Class will be issued within 10 days after the Court enters Final Approval of this Settlement certifying the Class and finally approving the Settlement Agreement. (Rutledge Decl., Ex. 1, p. 19.)

D. PAGA Allocation.

The sum of \$20,000 of the Gross Settlement Fund shall be designated as the recovery of civil penalties under PAGA. Of that amount, 75% (\$7,500) shall be paid to the California LWDA with the remaining 25% (\$5,000) distributed pro-rata to the PAGA Members. (Rutledge Decl., Ex. 1, p. 18.)

E. Class Representative Enhancement Payments.

Upon Court approval, the Named Plaintiff shall be paid a Class Representative Enhancement Payment pursuant to the terms of the Settlement Agreement. The Named Plaintiff intends to request the Court approve a payment of \$15,000. (Rutledge Decl., Ex. 1, p. 11.)

F. Attorneys' Fees and Costs to Putative Class Counsel.

Plaintiffs' Counsel agree not to request more than 1/3 of the Gross Settlement Amount and reasonable reimbursement of actual costs and expenses incurred by Plaintiffs' Counsel (estimated to be less than \$8,500). As will be proven in moving papers to be filed when final approval is sought, the requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation solely on a contingency basis. (Rutledge Decl., Ex. 1, p. 10.)

G. Uncashed Checks to Charity.

Settlement checks will specifically indicate the checks are void if not negotiated within 180 days of their issuance. Any settlement checks that remain uncashed 180 or more calendar days after issuance by the Settlement Administrator shall be voided. The Settlement Administrator will remit the amount of each Class Member's uncashed Settlement Payment to Hire Heroes, USA, a recognized nonprofit organization under Code of Civil Procedure § 384 whose stated purpose is to

1 help U.S. veterans find work. (Rutledge Decl., Ex. 1, p. 20.)

2 **VI. THE PUTATIVE CLASS VERY RESPECTFULLY REQUESTS PROVISIONAL**
3 **CERTIFICATION FOR SETTLEMENT PURPOSES.**

4 Plaintiffs very respectfully request certification of this Action solely for settlement purposes
5 only pursuant to § 382 of the Code of Civil Procedure. Class certification is appropriate “when the
6 question is one of a common or general interest, of many persons, or when the parties are numerous,
7 and it is impracticable to bring them all before the court . . .” (Code Civ. Pro. § 382.) The party
8 seeking certification has the burden to establish the existence of both an ascertainable class and a
9 well-defined community of interest among members of the Settlement Class. (*B.W.I. Custom*
10 *Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347.)

11 Here, the putative Class Members are ascertainable. The putative Class consists of all
12 persons Defendants employed as non-exempt employees from October 19, 2019 to preliminary
13 approval of the Settlement of which there are approximately 3220 individuals as of five months ago
14 according to the Defendants. (Rutledge Decl., Ex. 1, pp. 4, 10.)

15 The “community of interest” requirement consists of three criteria: (1) predominant common
16 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
17 class representatives that will adequately represent the class. (Code Civ. Pro. § 382.) As explained
18 below, the “community of interest” requirement is satisfied and, as such, the proposed settlement
19 meets all the requirements for class certification under California law.

20 **A. Common Questions of Law and Fact Predominate the Putative Class.**

21 Under Code of Civil Procedure § 382, a plaintiff must show the predominance of common
22 questions of law or fact to get a class certified. To meet this requirement, Plaintiffs must show the
23 existence of one or more factual or legal questions common to all members of the Settlement Class.
24 (*B.W.I. Custom Kitchen*, 191 Cal.App.3d 1341, 1347.)

25 Here, for purposes of certifying a settlement class, Plaintiffs show evidence of this
26 requirement because of the presence of common questions of law and fact, as alleged by the
27 Plaintiffs in their proposed FAC. Specifically, the questions of whether Defendants allegedly
28 violated the Labor Code by failing to pay Plaintiffs and the putative Class all overtime wages due,

1 failing to pay Plaintiffs and all putative Class Members all their wages immediately upon
2 termination or within 72 hours upon notice of resignation, failing to provide Plaintiffs and the
3 putative Class with accurate paystubs, and failing to reimburse Plaintiffs for business expenses
4 incurred predominate. (FAC, ¶¶ 1-212.) The first requirement of certification is therefore, met.

5 **B. The Named Plaintiff's Claims are Typical of the Putative Class's Claims.**

6 The typicality requirement of Code of Civil Procedure § 382 requires the Plaintiffs to
7 demonstrate that the members of the class have the same or similar claims as the named Plaintiffs.
8 (*B.W.I. Custom Kitchen*, at 1347.) The typicality requirement, a prerequisite in both California and
9 federal class actions, seeks to protect the due process rights of absent class members by ensuring
10 that the class representative will pursue the action vigorously, which is more likely to occur if the
11 interests of the members and the representative are unified. (*Caro v. Procter & Gamble Co.* (1993)
12 18 Cal.App.4th 644; *Hart v. Alameda County* (1999) 76 Cal.App.4th 766.)

13 In the instant case, there can be little doubt that, for purposes of certifying a settlement class,
14 the typicality requirement is fully satisfied. Defendants employed the Named Plaintiff, like every
15 other member of the putative Class, as nonexempt employees during the putative Class Period. The
16 Named Plaintiff, like every other member of the putative Class, alleges he sustained injuries and
17 damages arising out of and caused by Defendants' common course of conduct and policies in
18 violation of California. (proposed FAC, ¶¶ 1-212.) The claims of the Named Plaintiff and the
19 members of the putative Class arise from the same course of conduct by the Defendants, involve the
20 same work performed, and are based on the same legal theories. (*Id.*) Thus, the Named Plaintiff has
21 met the typicality requirement as to the common issues presented in this case.

22 **C. The Putative Class Representative Has Fairly and Adequately Protected the**
23 **Interest of the Putative Class.**

24 Class representatives must fairly and adequately represent the interests of the class. (*McGhee*
25 *v. Bank of America* (1976) 60 Cal.App.3d 442, 450-451.) The adequacy requirement is met by
26 fulfilling two conditions: (1) the named plaintiffs must be represented by counsel qualified to
27 conduct the litigation; and (2) the named plaintiffs' interest in the litigation must not be antagonistic
28 to the interests of the class -- they must have no disabling conflict of interest that might hinder the

1 prosecution of the action on behalf of the class. (*Id.*)

2 Plaintiff Craft meets these requirements. First, Plaintiff Craft has retained the Plaintiffs'
3 Counsel, firms with significant experience prosecuting class actions. Second, Plaintiff Craft is well
4 aware of his duties as the putative Class Representative and has actively participated in the
5 prosecution of this case. There is no antagonism between the interests of the Plaintiff Craft and
6 those of the putative Class, especially since Plaintiff Craft and the members of the putative Class
7 seek monetary relief under the same set of facts and legal theories. Under such circumstances,
8 Plaintiff Craft is an excellent candidate to serve as the Class representative. (Rutledge Decl., ¶ 73-
9 93, 131-140.)

10 **VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE.**

11 To protect the rights of absent class members, the court must provide ensure that class
12 members receive the best class action settlement notice practicable. (*Phillips Petroleum Co. v.*
13 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-75.)
14 California Rules of Court, Rule 3.769(f) requires that class members be provided with notice of the
15 final approval hearing, as well as an explanation of the proposed settlement and objection
16 procedures, in the manner specified by the Court.

17 Here, the proposed Notice of Settlement of Class Action satisfies these requirements.
18 Preliminary approval of the Settlement will enable Class Members to receive notice of this class
19 settlement in the best practicable manner possible. The proposed notice plan, calling for first-class
20 mailed notice to all members of the Settlement Class and PAGA Group, is consistent with class
21 notices approved by state and federal courts, and under the circumstances here is the best notice
22 practicable. (Rutledge Dec., Ex. 1, Ex. A; *Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 966.)

23 **VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED.**

24 The last step in the settlement approval process is the formal hearing, at which the Court
25 may hear all evidence and argument necessary to evaluate the proposed Settlement. At that hearing,
26 proponents of the Settlement may explain and describe its terms and conditions and offer argument
27 in support of settlement approval; and, members of the Settlement Class, or their counsel, may be
28 heard in support of or in opposition to the Settlement Agreement. The parties very respectfully

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1 request that the hearing be held at the earliest date permitted by the terms of the Settlement.

2 **IX. CONCLUSION.**

3 For the foregoing reasons, Plaintiffs very respectfully request this Court to enter the
4 concurrently filed [Proposed] Preliminary Approval Order.

5 Dated: September 9, 2021

Law Office of
Thomas D. Rutledge

7 By: Thomas D. Rutledge
/s/Thomas D. Rutledge
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, IAN PANCER, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 105 West F St. San Diego, CA. 92101

On September 9, 2021, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES ISO PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND FOR AN ORDER: (1) PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT; (2) DIRECTING DISTRIBUTION OF NOTICE OF SETTLEMENT; AND (3) SETTING A HEARING FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

☒ (BY E-MAIL via E-file) I am readily familiar with the business practice for of the Court's third party e-filing vendor, onelegal, for emailing notification of e-service and for providing a download link to recipients of the e-service. This documents identified herein are being sent for download via this third-party vendor pursuant to the vendor's policies and practices.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed September 9, 2021, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Ian Pancer
/s/IAN PANCER

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