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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

CARMEN LOPEZ and PETE
JARAMILLO, individually, and as a
representative of other aggrieved
employees,

Plaintiff,

vs.

VEHICLE PROTECTION SPECIALISTS,
LLC, a limited liability company;
DANIEL LAURENT, an individual, and
DOES 1 through 250, inclusive,

Defendants.

Case No.: 30-2020-01174402-CU-OE-CXC

The Honorable Lon F. Hurwitz

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTORY INFORMATION

Plaintiff seeks final approval of a \$275,000 class action settlement that provides significant monetary relief for 235 Class Members. The key terms of the Amended Joint Stipulation re Class Action and PAGA Penalty Settlement¹ are as follows:

- (1) Settlement Class Members: “the collective of all current and former California employees of Defendants who worked in non-exempt positions December 14, 2016, and May 13, 2022.”
- (2) PAGA Members: “the collective of all current and former California employees of Defendants who worked in non-exempt positions since November 2, 2019 to May 13, 2022.”
- (3) A Gross Fund Value of \$275,000
 - (a) The Net Fund Value (i.e., the Gross Fund Value minus Attorneys’ Fees and Costs, payroll (*employee only*) taxes, the Claims Administration Fee, the LWDA Payment, and the Class Representative Service Award).
 - (b) \$91,666.67 in Attorneys’ Fees (1/3 of the Gross Fund) and \$10,000 in actual costs to Class Counsel.
 - (c) \$6,300 Claims Administration Fee to Claims Administrator, Simpluris.
 - (d) \$20,000 PAGA payment pursuant to Private Attorneys General Act (75% of which, or \$15,000, goes to the LWDA, and the remaining 25%, or \$5,000, going to the Net Fund).
 - (e) \$7,5000 Service Award to each of the class representatives.

The Settlement is fair, reasonable, and adequate—and meets approval under California law. Accordingly, Plaintiff respectfully requests that this Court grant final approval of the

¹ Hereinafter, “Settlement Agreement” or “Stipulation.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

1 Settlement.

2 **II. FACTS AND PROCEDURE**

3 **A. Brief Procedural History and Claims Asserted**

4 On November 2, 2020, Plaintiff Lopez filed a PAGA notice with the Labor and
5 Workforce Development Agency (“LWDA”).

6 On December 14, 2020, Plaintiff filed a Class Action Complaint. On November 9, 2021,
7 Plaintiffs filed a First Amended Complaint, adding Mr. Jaramillo as a plaintiff. The First
8 Amended Complaint alleged that Defendant failed to: (1) pay all wages, including minimum
9 wages and overtime; (2) pay overtime at proper rates; (3) provide required meal periods and rest
10 breaks, including failure to record same; (4) pay wages due at termination; and (5) provide
11 accurate wage statements.² (Buchsbaum Decl. ¶9). On August 7, 2023, Plaintiffs filed a Second
12 Amended Complaint, adding a claim under the Private Attorney General Act. Plaintiffs sought
13 to recover back wages, premiums, and statutory and civil penalties for themselves and Class
14 Members. (Buchsbaum Decl., ¶9.)

15 **B. Summary of Investigation**

16 Plaintiffs’ Counsel thoroughly investigated and researched the Class claims, as well as
17 the representative PAGA claims, and their theories of liability, their defenses, and the
18 developing body of law before the Settlement. The comprehensive investigation included the
19 exchange of documents and statistical information with Defendant, as well as interviews with
20 several witnesses. Plaintiffs’ Counsel also retained a statistical expert to analyze a 20% class
21 sampling of pay data. There were also numerous discussions with Defense counsel regarding
22 the merits and potential legal defenses. Plaintiffs received, among other things, the following
23 information: (1) data and documents relevant to Class-wide liability (“Class Data”) in support of
24 their investigation and evaluation of Class claims; (2) employee handbooks and other
25 documents addressing Defendant’s wage and hour practices, *e.g.*, (i) timekeeping and payroll

26
27 ² The complaint also includes causes of action for unfair competition (B&P Code §
28 17200).

1 policies and (ii) meal and rest periods records; (4) employee time and payroll records; (4)
2 employee time audit records; and (5) random sampling of Class Members' wage statements.

3 Plaintiffs' Counsel also determined: (i) the approximate average hourly rate of pay for
4 Class Members; (ii) the total number of former and current employees in the Class Period; (iii)
5 the total number of Class Members in the PAGA period; and (iv) the total number of pay
6 periods and workweeks worked by all Class Members during the Class Period. (Buchsbaum
7 Decl., ¶30.)

8 The receipt and analysis of the Class Data was sufficient for the Parties to make an
9 informed decision about the strengths and weaknesses of Plaintiffs' theories of liability,
10 Defendant's defenses, Class-wide damages, and benefits of Settlement. (Buchsbaum Decl.,
11 ¶30.)

12 Further, and continuing its due diligence, Plaintiffs' Counsel (1) determined Plaintiffs'
13 suitability to serve as Class representatives, through interviews, background investigations, and
14 analyses of their employment files and related records; (2) researched wage-and-hour class
15 actions involving similar claims; (3) engaged in the discovery process, including hiring an
16 expert statistician; (4) obtained and analyzed Defendant's wage-and-hour policies and
17 procedures; (5) obtained and analyzed hundreds of time and corresponding payroll records to
18 determine violation rates and penalty payments; (6) researched the latest case law bearing on the
19 theories of liability; (7) researched settlements in similar cases; (8) analyzed the value of
20 Plaintiffs' claims; (9) drafted the mediation brief; (10) negotiated the terms of the Settlement;
21 (11) analysed the Stipulation of Settlement; (12) finalized the Notice of Class Action
22 Settlement; and (13) drafted preliminary and final approval papers. (Buchsbaum Decl., ¶30.)

23 C. Summary of Settlement Negotiations

24 The Parties agreed to private mediation to attempt to resolve the Class claims, as well as
25 the representative PAGA claims. On May 13, 2022, the Parties attended an all-day mediation
26 with Glenn Lerman—an accomplished mediator with extensive experience in resolving
27 employment law matters, including wage and hour class actions. Under Mr. Lerman's
28 guidance, the Parties agreed to a mediator's proposal, including the principal terms of the

1 settlement. (*Id.*) That compromise is set forth in complete and final form in the Stipulation
2 [ROA #158]. At all times the Parties' negotiations were adversarial and non-collusive.
3 (Buchsbaum Decl., ¶32.)

4 **D. Summary of the Case, Including Legal and Factual Basis of Each Claim**

5 Plaintiffs posited several theories of Class liability against Defendants in support of their
6 alleged claims. The primary claim was that the Defendant miscalculated the regular rate for
7 overtime purposes. Specifically, putative class members received performance-based bonuses
8 and commissions in addition to hourly wages. The plaintiffs contended that there was an
9 unpaid overtime problem because the Defendant did not include these bonus earnings in the
10 regular rate calculation. The Defendant, on the other hand, claimed that if the regular rate issue
11 was a concern, the calculation discrepancies were not intentional and created minor
12 underpayments. (Buchsbaum Decl., ¶9.)

13 Additionally, approximately 10% of the class were paid under minimum wage at least
14 for a few pay periods. The total exposure, however, for the minimum wage underpayments
15 and regular rate calculations, with interest, only amounted to \$21,879. (Buchsbaum Decl.,
16 ¶10.)

17 This regular rate miscalculation and minimum wage issue potentially created significant
18 exposure to waiting time penalties, since these underpayments were not paid immediately upon
19 separation in violation of Labor Code §201. There were approximately 138 former employees
20 in the class period, which translated to \$450,971 in potential waiting time penalties. However,
21 only approximately half of these individuals were subject to the regular rate calculation error or
22 minimum wage error. However, all the class members had some form of unpaid wages at issue,
23 as there were minimum wage arguments that were also based on the inaccuracy of the time
24 records, which frequently were just reported as round hours without any actual evidence of time
25 records associated with that round number. In any event, the Defendant contended there were
26 good faith defenses to these underpayments, and thus the availability of any waiting time
27 penalty at all was not a sure thing and was a significant risk of the litigation. (Buchsbaum
28 Decl., ¶11).

1 The Defendants biggest risk related to the meal and rest period policies. The Defendants
2 have a potentially problematic meal period policy: The workers do not take their meal when it
3 is convenient to do so at any time prior to the end of the 5th hour. Rather, there is a set meal
4 period time from 12 pm to 1 pm. That is a significant issue because the workers start at 7 a.m.,
5 which means that if they are on a call at 12 p.m. and can't hang up on the customer, the meal
6 ends up being late. This is borne out in the records, which show that in 43% of the shifts, there
7 is a late meal period. Some of the meal periods are just 1 to 5 minutes late (31.9%) but a
8 substantial majority are greater than 11 minutes late. The sampling we have reviewed, however,
9 shows no history of the company ever paying meal period premiums. (Buchsbaum Decl., ¶12).

10
11 Under the California Supreme Court's ruling in *Donohue v. AMN Services*, there is a
12 presumption that meal period records that show non-compliance with the timing requirements
13 subject the employer to a meal period premium. As a result, we start with the premise that these
14 late meal periods constitute violations, which on a class basis extrapolate out to \$245,200 in
15 unpaid premiums. There are an additional \$15,388 owed for short meal periods. There is
16 interest owed on these premiums in the amount of \$59,841. (Buchsbaum Decl., ¶13).

17
18 The Defendant, on the other hand, contended that employees were required to stop
19 working at noon, even if there was a pending call, and that this policy was enforced. This raised
20 the specter of individual issues impacting certification and resulted in a significant discount to
21 the settlement value of the claim. (Buchsbaum Decl., ¶14).

22
23 The Defendant's Rest Period Policy states the following: "Employees should not clock
24 out for break times and ***must say in the assigned work area during the break.***"

25
26 In our view, this rest period policy was problematic because the policy, by its own terms,
27 fails to relinquish control over the employees during rest periods. As a result, the employees are
28 unable to use their time as they wish. While there are practical limitations as to what can be

1 accomplished within a 10-minute rest period, the Defendant's policy forecloses the employee's
2 options. Notably, the Division of Labor Standards Enforcement's website takes a clear position
3 regarding "on premises" rest break policies in its "Frequently Asked Questions" Section, as well
4 as in the DLSE Enforcement Manual:

5
6 **Q: Can my employer require that I stay on the work premises during my rest**
7 **period?**

8 **A: No, your employer cannot impose any restraints not inherent in the rest**
9 **period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016)**
10 **5 Cal.5th 257, 259, the California Supreme Court held that the rest period**
11 **requirement "obligates employers to permit and authorizes employees to**
12 **take off-duty rest periods. That is, during rest periods employers must**
13 **relieve employees of all duties and relinquish control over how employees**
14 **spend their time." As a practical matter, however, if an employee is**
15 **provided a ten-minute rest period, the employee can only travel five minutes**
16 **from a work post before heading back to return in time."**

17
18 Assuming a 100% violation rate, the rest period exposure extrapolated to the class is
19 approximately \$777,436 in rest period premiums and associated interest. (Buchsbaum Decl.,
20 ¶17).

21
22 That said, the Defendants produced a compliant rest period policy from an employee
23 handbook, which did relinquish control during rest periods. As a result, there were two
24 conflicting policies at issue, and determining which one controlled raised significant risk to the
25 viability and certification of the claim, resulting in a substantial discount to the settlement value
26 based on a 100% violation rate. (Buchsbaum Decl., ¶18).

1 The wage statement claim was premised on the Defendant's failure to accurately track
2 hours worked and then reporting these estimates in the paystubs. There were only 88 employees
3 within the statutory period for the paystub claim, with a maximum exposure of \$159,300.
4 However, establishing that the employees "suffered injury" under the statute was a challenge and
5 resulted in a significant discount of the settlement value of this claim. (Buchsbaum Decl., ¶19).
6

7 The PAGA claims were all derivative of the claims above, and based on 2489 pay
8 periods, the maximum exposure was \$248,000 in penalties, though we found that this number
9 was likely to be substantially reduced by the court due to the overlapping statutory penalties and
10 under the Court's discretionary powers. (Buchsbaum Decl., ¶20).
11

12 The gross exposure of the claims at issue in the operative complaint are as follows: (1)
13 \$21,879 for unpaid minimum wages and regular rate underpayments; (2) \$450,971 for waiting
14 time penalties; (3) \$245,200 in unpaid meal premiums for late meals; (4) \$15,388 for unpaid
15 premiums for short meals; (5) \$59,841 in interest in unpaid meal period premiums; (6) \$159,300
16 in paystub penalties; (7) \$777,436 in rest period premiums; and (8) \$248,900 in PAGA
17 penalties. This totals gross theoretical exposure of \$1,978,915. (Buchsbaum Decl., ¶21).
18

19 While the case settled for significantly below that amount (\$275,000) the settlement
20 reasonably reflects the risks associated with these claims. We viewed the risk related to the
21 unpaid minimum wages and regular rate payments as relatively low, but the regular rate claims
22 in particular were subject to dispute over whether the bonuses paid were discretionary. If so,
23 they were not includable in the regular rate. We attributed a settlement value to these claims of
24 \$15,000 to adjust for this risk. (Buchsbaum Decl., ¶22).
25

26 The waiting time penalty was premised on all 138 former employees being owed wages
27 upon separation. However, only approximately 25 of these were underpaid minimum wage,
28 which would have yielded a waiting time penalty of approximately \$75,000. The other
underpayments were either subject to a good faith dispute (i.e. discretionary bonuses related to
regular rate pay) or would likely have involved highly individualized inquiries. For example,

1 the pay records were in many cases formulaic and did not appear to be organic, accurate
2 descriptions of working hours. That is, many of the records appeared to look like schedules
3 rather than actual working hours. However, given the absence of actual time records refuting
4 these entries, establishing who was underpaid, when, and how much was in all likelihood going
5 to make certification of this issue very difficult. As a result, we viewed the waiting time penalty
6 claim as far less valuable for settlement purposes than the gross exposure. We viewed the
7 realistic, adjusted settlement value of the claim to be no more than \$85,000. (Buchsbaum Decl.,
8 ¶23).

9 The premiums related to meal periods were subject to considerable dispute. The
10 Defendant claimed that its systems shut down prior to the end of the 5th hour so that a uniform
11 meal period could occur, and that if time records showed late punches that was just because the
12 employee clocked out late while performing no additional work. Moreover, many of the class
13 members worked remotely from home, so arguing that they could not take a meal when they
14 wanted was challenging from that standpoint, and would have raised the potential of many
15 individual inquiries, jeopardizing certification. Similarly, pursuant to the *Brinker Restaurant*
16 *Corporation v. Superior Court* decision, just taking a late meal does not mean a premium is
17 owed. The question then becomes why the meal was late, whether the meal was waived, and
18 what circumstances led to the late meal. Those are highly fact specific inquiries that
19 jeopardized certification to a substantial degree. As a result, although the gross exposure was
20 over \$300,000, we viewed the realistic, discounted settlement value of these claims as only
21 10%, or \$30,000. (Buchsbaum Decl., ¶24).

22 The largest potential exposure related to the rest period claims, but it was solely
23 premised on a rest period policy that failed to relinquish control. That arguably violated rules
24 established by the California Supreme Court in *Augustus v. ABM Securities*. That said, the
25 Defendant produced another rest period policy that was complaint and relinquished control, and
26 claimed that was the actual policy at issue. This raised the spectre of a situation where each
27 class member would have to be asked which policy they were provided, whether they read it,
28 and whether they understood it was enforced. The fact that a large number of the class members

1 worked from home compounded the difficulties further, as arguing lack of freedom working out
2 of home was a large challenge. The potential problems with this claim were so significant that
3 we only attributed a settlement value of \$40,000 to this claim. (Buchsbaum Decl., ¶25).

4 The paystub claim was premised on time entries that were entered manually in round
5 increments rather than captured by a time-keeping system. Anecdotally, we understood that
6 working hours sometimes continued past the scheduled day, so there was good reason to believe
7 that the records were not entirely accurate. Arguably, this created exposure under Labor Code
8 §226(a), but again proving which pay stubs were inaccurate was likely to be an almost
9 insurmountable task. We thus attributed only \$35,000 to this claim on a risk-adjusted basis.
10 (Buchsbaum Decl., ¶26).

11 The PAGA exposure was approximately \$250,000, but this was a completely derivative
12 claim that had the same liability and exposure risks as the statutory violations upon which they
13 were premised. Moreover, under PAGA the Court had discretion to reduce the award so that it
14 would not be confiscatory. We viewed this scenario as likely, since a PAGA penalty on top of a
15 statutory penalty had an element of double recovery. As a result, we viewed the PAGA claim as
16 having a risk adjusted value of \$25,000. (Buchsbaum Decl., ¶27).

17 The total risk-adjusted settlement value of this case was, in my view and subject to my
18 experience in similar cases, approximately \$230,000. There were also litigation costs and
19 attorney's fees that might have been recoverable. As a result, I believe based on considerable
20 experience litigating wage and hour class actions, that the \$275,000, non-reversionary
21 settlement was appropriate and in in the interests of the class. (Buchsbaum Decl., ¶28).

22 **E. The Proposed Settlement Fully Resolves Plaintiff's Claims**

23 **1. Composition of the Settlement Class**

24 The proposed Settlement Class Members consist of:

25 "The collective of all current and former California employees of Defendant who
26 worked in non-exempt positions between December 14, 2016, and May 13, 2022.

27 All current and former California employees of Defendants who worked in non-e
28 [Settlement Agreement, "Definitions," at ¶22]

2. Settlement Consideration

Plaintiff and Defendant have agreed to fully resolve the class and representative claims for \$275,000. The settlement is non-reversionary. The Gross Fund Value includes: (1) settlement payments to participating Class Members (“Net Settlement Fund”); (2) attorneys’ fees of \$91,666.67 (1/3 of the gross amount); litigation costs of \$10,000; (3) Claims Administration Fee of \$6,300; (4) LWDA Payment of \$20,000 (with \$15,000 distributed to the LWDA, and the remainder, \$5,000, distributed to Class Members as part of the Net Settlement Fund); (5) payroll taxes (employee); (6) Class Representative Service Award of \$7,500 to each class representative.³

The distribution of the Net Settlement Fund to Class Members is straightforward: Each Class Member’s share of the settlement will be proportional to the total number of workweeks he or she worked during the Class Period (Settlement Agreement ¶32(d))

The PAGA payments will be made based on the number of pay periods each Class Member worked during the PAGA period. (Settlement Agreement ¶32(d.) The number of workweeks and pay periods will be determined from Defendant’s records, and Class Members will have an opportunity to challenge those records. (*See* Notice of Pendency of Class Action)

Given that there are 235 Class Members, the average net recovery will be approximately \$550.85. *See* Pavlik Declaration, at ¶13. This average net recovery is significantly higher than other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*,

³ Defendant will pay the employer’s share of payroll taxes in addition to the Gross Fund.

Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of approximately \$20.).

3. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiff and Class Members will agree to release the Released Claims. (Settlement Agreement ¶45) Plaintiffs, as the class representatives, will also agree to an additional general release of their individual claims as part of the consideration for their enhancement as the class representatives. See ¶46.

III. DUNK/KULLAR ANALYSIS

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement"). The Court already granted Preliminary Approval of the Settlement on May 27, 2024 [See Register of Action #169].

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. Rule 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, final approval is warranted if the settlement falls within a “reasonable range.” *See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”). Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is small.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation”).

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010) (“*Cellphone Termination Fee Cases II*”). The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

2. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and Legal Issues

As set forth in greater detail above, based on our analysis of documents produced by

Defendant (including time and payroll records, wage statements, and policies and procedures manuals) and information provided during interviews, Plaintiffs' Counsel was able to realistically assess the value of the class claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Buchsbaum Decl. ¶29)

By engaging in a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel can state with confidence that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant, the prospect of an adverse judgment on liability by the jury, and potential appellate issues. (Buchsbaum Decl. ¶30)

3. The Settlement Was Reached through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. *Newberg*, § 11.51.

The Parties participated in mediation with Glenn Lerman who has extensive experience mediating wage and hour class actions. (Buchsbaum Decl. ¶32.) Mr. Lerman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*) See *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement), *In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 U.S. Dist. LEXIS 145551 (N.D. Cal. June 25, 2008) (same); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings

were free of collusion and undue pressure.”). At all times, the Parties’ negotiations were adversarial and non-collusive. Through Mr. Lerman’s efforts and guidance, the Parties reached this Settlement at the completion of a full-day of mediation. (Buchsbaum Decl., ¶32). The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff’s Counsel regularly litigates wage and hour class actions and have reached numerous class action and representative settlements. The Defendant’s lawyers are also sophisticated, experienced class action lawyers. See (Declaration of Brent S. Buchsbaum, at ¶¶33).

4. The Proposed Settlement Is Reasonable Given the Strengths of Plaintiff Claims and the Risks and Expense of Litigation

Of the many factors that courts consider in deciding whether to approve a class action settlement, “[t]he most important factor is the strength of the case for Plaintiffs on the merits, balanced against the amount offered in settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 407-8 (2010).

Plaintiff was cautiously optimistic about the chances of prevailing on the class claims, as well as the additional representative PAGA claims. Nevertheless, we recognized that had the litigation continued, we may have encountered significant legal, practical, and factual hurdles that could have prevented the Class from obtaining any recovery, including failure to certify a class. (Buchsbaum, Decl. ¶34)

The time and effort—not to mention the uncertainty (which is more fully described above)—that would be expended to pursue further litigation may easily eclipse the amount that is recoverable. For example, if this action had settled following additional litigation, the settlement amount would likely have taken into account the additional costs incurred, and there may have been less available for Class Members. Plaintiff and his counsel would have had to devote considerable time and resources towards trial and the difficult and complicated issues of proof. See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (explaining that “[i]f plaintiffs cannot proceed as a class,

some—perhaps most—will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover.”). (Buchsbaum Decl. ¶35).

In short, given the substantial risks in litigating this action, and the uncertainty of success, the Settlement represents a reasonable compromise of Plaintiff’s claims, and ensures that Class Members receive a fair and adequate recovery.

5. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁴

On April 16, 2024, the claims administrator, Simpluris, received the Court-approved *Notice of Pendency of Class Action and PAGA Action Proposed Settlement* (hereafter “Notice”). The Notice advised Class Members of their right to request exclusion from the Class Settlement, object to the Class Settlement, do nothing, and the implications of each such action. The Notice advised Class Members of applicable deadlines and other events, including the Final Approval Hearing, and how Class Members could obtain additional

⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 information. Pavlik Dec., at ¶2.

2 On June 17, 2024, Defendants' Counsel provided Simpluris a List containing each
3 Class Member's and PAGA Employee's full names, last known mailing addresses, Social
4 Security Numbers, number of Workweeks during the Class Period, and PAGA Pay Periods
5 with Defendant during the PAGA Period (collectively, "Class List"). The Class List contained
6 data for two hundred and thirty-five (235) individuals. Pavlik Dec., at ¶3.

7 The mailing addresses contained in the Class List were processed and updated utilizing
8 the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service.
9 The NCOA contains requested changes of address filed with the U.S. Postal Service. In the
10 event that any individual had filed a U.S. Postal Service change of address request, the address
11 listed with the NCOA would be utilized in connection with the mailing of the Notice. Simpluris
12 was able to locate twenty-four (24) updated addresses using NCOA prior to the mailing of the
13 Notice. Pavlik Dec., at ¶4.

14 On June 28, 2024, the Notice was mailed to two hundred and thirty-five (235)
15 individuals identified as Class Members, of the two hundred and thirty-five (235) Class
16 Members, one hundred and twelve (112) were identified as PAGA Members. The Notice was
17 mailed via First Class mail in both English and Spanish to the Class Members in the Class List.
18 Pavlik Dec., at ¶5.

19 A total of fifty-three (53) Notices were returned to Simpluris. If a Class Member's
20 Notice was returned by the USPS as undeliverable, Simpluris performed an advanced address
21 search (i.e. skip trace) on all of these addresses by using Accurant, a reputable research tool
22 owned by Lexis-Nexis. Simpluris used the Class Member's name and previous address to
23 locate a current address. Through advanced address searches and utilizing the USPS
24 forwarding address database, Simpluris was able to locate forty-five (45) updated addresses
25 and Simpluris promptly mailed a Notice to those updated addresses. Ultimately, there are eight
26 (8) Notices that remain undeliverable. Pavlik Dec., at ¶6.

27 A toll-free telephone number was included in the Notice for the purpose of allowing the
28 Class Members to call Simpluris and to make inquiries regarding the Settlement. The system is

1 accessible 24 hours a day, 7 days a week, and will remain in operation throughout the
2 settlement process. Callers have the option to speak with a live call center representative
3 during normal business hours or to leave a message and receive a return call during non-
4 business hours. Spanish-speaking representatives are available during normal business hours.
5 The toll-free telephone number included in the Notice was (888) 369-3780 and was live on
6 June 28, 2024. Pavlik Dec., at ¶7.

7 **6. The Response of the Class Supports Settlement**

8 The response of the Class strongly supports this settlement. There were zero objections
9 and zero requests for exclusion. Moreover, the Class Notice, which described the settlement,
10 was successfully distributed to a very high percentage of the class members. The deadline for
11 Class Members to submit a Request for Exclusion from the Class Settlement, or Object to the
12 Class Settlement, was August 12, 2024 and the re-mailed Notice extended deadline is
13 September 26, 2024. Simpluris has not received any Request for Exclusion from the Settlement
14 or Objection to the Settlement from Class Members. Pavlik Dec., at ¶8-10. Prior to the
15 hearing, Plaintiff's Counsel will file a Supplemental Declaration from Ms. Pavlik confirming
16 that this information is up to date following the deadline for the September 26 re-mailing. We
17 do not anticipate there will be any new information to add.

18 There are two hundred and thirty-five (235) Settlement Class Members who will be
19 paid their portion of the Net Settlement Fund. Of the (235) Settlement Class Members, one
20 hundred and twelve (112) are also PAGA Members will also be paid out of the Employee
21 PAGA Fund. Pavlik Dec., at ¶11.

22 The Net Settlement Fund of \$129,450.79 available to pay Settlement Class Members
23 was determined by subtracting the Attorneys' Fees (\$91,666.67), Attorneys' Litigation Costs
24 (\$10,000.00), Service Awards (\$15,000.00), PAGA Penalties to the LWDA (\$15,000.00),
25 individual PAGA awards (\$5,000.00), and the Administration Costs (\$6,300.00) from the
26 Gross Settlement Sum of \$275,000.00. Pavlik Dec., at ¶12.

1 The average estimated Individual Settlement Payment is \$550.85, the highest estimated
2 Individual Settlement Payment is \$4,745.13, and the lowest estimated Individual Settlement
3 Payment is \$2.35. Pavlik Dec., at ¶13.

4 As of this date, there are one hundred and twelve (112) PAGA Members who will be
5 paid their portion of the Employee PAGA Fund of \$5,000.00. The average estimated Individual
6 PAGA Payment is \$44.64, the highest estimated Individual PAGA Payment is \$217.59, and the
7 lowest estimated Individual PAGA Payment is \$0.23. Pavlik Dec., at ¶14-15.

8 7. The Proposed PAGA Settlement Is Reasonable

9 Pursuant to the Settlement Agreement, \$20,000 from the Class Settlement Amount will
10 be allocated to the resolution of Plaintiff's PAGA claim, of which 75% (\$15,00) will be paid
11 directly to the LWDA, and the remaining 25% will be paid to Participating Class Members.
12 (Settlement Agreement ¶53.) This result was reached after good-faith negotiation between the
13 parties. Where PAGA penalties are negotiated in good faith and "there is no indication that
14 [the] amount was the result of self-interest at the expense of other Class Members," such
15 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-
16 00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom*
17 *Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in
18 approving a settlement which does not allocate any damages to the PAGA claims.").

19 Further, an important feature of the PAGA statute is that, when determining whether or
20 not to assess a penalty, the Court exercises the same discretion that the Labor Commissioner
21 has, and may reduce the penalties to be assessed against the employer pursuant to California
22 Labor Code section 2699(e)(1)-(2). As such, with respect to the PAGA claim, the Court was
23 unlikely to assess cumulative penalties for the maximum number of possible, separate
24 California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or
25 confiscatory, especially where certain conduct may be governed by multiple provisions of the
26 California Labor Code that are interrelated and work in tandem. *See Bernstein v. Virgin*
27 *America, Inc.* (N.D. Cal. 2019) 365 F.Supp.3d 980, 992 (exercising discretion to lower
28 PAGA penalties and reasoning that the maximum penalties would be confiscatory and

1 excessive); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517. (lowering the
2 PAGA penalties on grounds that the full penalty would be “unjust, arbitrary, and oppressive”).
3 Defendant also maintained and continue to maintain that they had legally compliant
4 employment policies and practices throughout the statutory period and denied and continue to
5 deny that they violated the California Labor Code. Defendant argued that heightened penalties
6 would not be assessed for subsequent violations unless it could be shown that Defendant had
7 notice that they were violating the law, that they would be able to show a lack of willfulness
8 in the violations, that adjudication of the PAGA claims was not sufficiently “manageable”
9 given the variation as to the circumstances that could allegedly cause the employees to work
10 during rounded time, use a personal mobile device for work-purposes, and/or be deprived of
11 compliant meal and rest breaks.

12 Last, where underlying California Labor Code claims are being resolved, state and
13 federal courts have approved settlements that attribute little or no amounts for PAGA. See,
14 e.g. *Matter of Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 588-590 (No
15 abuse of discretion by the trial court in approving the allocation of \$0 toward PAGA penalties,
16 where PAGA claim is resolved as a part of an overall resolution of the underlying California
17 Labor Code violations); *Franco v. Ruiz Food Prods, Inc.* (E.D. Cal. Nov. 27, 2012) No.
18 **1:10-cv-02354-SKO**, 2012 WL 5941801, at *14 (approving allocation of \$10,000, out of the
19 settlement of \$2.5 million, toward the settlement of the PAGA claim); *Garcia v. Gordon*
20 *Trucking* (E.D. Cal. Oct. 31, 2012) No.1:10-CV-0324-AWI-SKO, 2012 WL 5364575, at *3
21 (approving the allocation of \$10,000, out of the settlement of \$3.7 million, toward the
22 settlement of the PAGA claim); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16,
23 **2011**) No. C 05-4526 MHP, C 0647924 MHP, 2011 WL 672645, at *1 (approving the
24 allocation of \$10,000, out of the settlement of \$6.9 million, toward the settlement of the
25 PAGA claim); *Jack v. Hartford Ins. Co.* (S.D. Cal. Oct. 13, 2011) No. 3:09-cv-1683—MMA
26 (JMA), 2011 WL 4899942, at *18 (approving the allocation of \$3,000, out of the settlement of
27 \$1.2 million, toward the settlement of the PAGA claim); *Schiller v. David’s Bridal, Inc.* (E.D.
28 **Cal. June 11, 2012**) 2012 WL 2117001, at *14 (approving the allocation of \$10,000, out of

the settlement of \$518,245, toward settlement of the PAGA claim).

8. The Proposed Class Representative Enhancement Payment Is Reasonable

The named Plaintiff is eligible for payment that reasonably compensates him for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service payments” to named Plaintiffs for their efforts in bringing the case). “Incentive awards are fairly typical in class action cases. Such awards are discretionary and are intended to compensate class representatives for work done on behalf of the class” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., *Newberg on Class Actions* § 11:38 (4th ed. 2008)). These payments work both as an inducement to participate in the suit and as compensation for time spent in litigation activities. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (describe the service award as an *incentive* to the class representatives).

The Parties have negotiated an enhancement payment for the class representatives in the amount of \$7,500 each for their efforts in bringing the original action, serving as private attorney general under PAGA, assisting counsel with discovery, regularly conferring with counsel on the status of his case and the strategies for prosecuting the claims, attending an all-day mediation session, and reviewing the proposed settlement to ensure that its terms are fair and that it provides adequate relief for the Settlement Class. They are also signing a general release. (Settlement Agreement ¶46) These enhancement payments are fair and reasonable compensation for Plaintiff’s services to the Class. Modest payments to named plaintiffs for their services as class representatives are customary and generally approved. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995).

Courts have recognized that employees face a particular set of challenges when bringing class action suits. Current employees risk retaliation or, less explicitly, greater difficulties in the workplace as a result of bringing suit. *See Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at *20 (S.D.N.Y. Oct. 28, 2011) (“Even where there is

not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members.”). Both current and current employees also place their future employment prospects in peril by becoming class representatives, as “the fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person.” *Id.* at *4. It is common for employers to screen employee candidates to determine whether they have ever filed suit, and that employee candidates who might be branded “litigious” are likely to be screened out of the process. In fact, an entire industry has developed for providing employers with background information on employee candidates.⁵ By bringing this action against an employer, Plaintiffs have assumed considerable reputational risk that may impact her ability to find employment in the near and distant future. Long after this action is forgotten by Class Members, these Class Representatives will have to endure the risk of being branded “litigious” by prospective employers, and may have employment applications rejected on that basis alone.

⁵ The companies that provide these services actually promote themselves by touting their ability to identify and weed out potentially litigious employee candidates:

- “Our value-added partner uses sophisticated technology to ensure the officers and managers of our clients can significantly reduce the likelihood of hiring litigious and untrustworthy employees by providing the information needed to make critical hiring decisions. We specifically help you avoid the traps, pitfalls and legal issues that plague many companies today.” *Sentric, Inc.*, <http://www.sentric.net/solutions/workforce-management/ancillary-products/pre-employment-screening>;
- “In today’s litigious culture, employers simply cannot afford to hire employees who will put their company at risk.” *Back Track Screening*, <http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf>;
- “Background screening has become a necessity in today’s litigious society. An employer, who bases their hiring decisions based solely on instinct, may very well open the door to extremely expensive lawsuits. Bad decision making from the start can cause huge budgetary impacts upon your company and also destroy the reputation of all those involved.” *Quest Background Services – The Screening Specialists*, http://www.questbackgrounds.com/pre-employment_screening.htm;
- “In today’s litigious culture, you simply cannot afford to hire employees who will put your company at risk.” *Credit Technologies, Inc.*, http://www.credittechnologies.com/Employment_Screening.asp.

Finally, the named Plaintiffs also released any known and unknown individual claims against Defendant as part of the Cal. Civ. Code section 1542 general release he executed, which is considerably broader than the separate, narrower release required of the Settlement Class. Class Representatives' execution of a general release—entailing an additional detriment for Class Representatives that does not apply to other Class Members—further supports their request for an enhancement award. *See Schaffer v. Litton Loan Servicing, LP*, No. 05-07673-MMM, 2012 U.S. Dist. LEXIS 189830, *64 (C.D. Cal. Nov. 13, 2012) (“[C]lass representatives released their actual damages claims as part of the Settlement. This [“personal benefit”] factor, therefore, weighs in favor of approving the incentive awards.”). For all these reasons, the request enhancement payment to Plaintiff is reasonable and should be awarded.

9. The Negotiated Attorneys' Fees and Costs Are Reasonable

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).

At final approval, Plaintiff will seek Court-approval of attorneys' fees and costs of \$91,666.67 (one-third of the Class Settlement Amount) and \$10,000 respectively.

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IV. CLASS CERTIFICATION

A. California Law Authorizes Provisional Certification for Settlement Purposes The California Standard for Class Certification

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” *Sav-On*, 34 Cal. 4th at 326. Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

B. Numerosity: The Total Number of Class Members

The proposed Settlement Class consists of 235 individuals, making joinder of all Class Members impracticable.

C. Ascertainability: The Manner by Which Class Members Will Be Identified

Whether a class is “ascertainable” within the meaning of Section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Lee v. Dynamex*, 166 Cal. App. 4th 1325, 1334 (2008). Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared

1 *with those requiring separate adjudication, are so numerous or*
2 *substantial that the maintenance of a class action would be*
3 *advantageous to the judicial process and to the litigants.”*

4
5 ***Brinker*, 53 Cal. 4th at 1021-1022** (citations omitted).

6 Because all Class Members are either current or former direct employees of Defendant,
7 the class is readily ascertainable from Defendant’s regular business records.

8 **D. Community of Interest: The Class Representative Has Claims Typical of the**
9 **Class and Can Adequately Represent Them**

10 The California statutes relating to the Plaintiffs’ claims apply with equal force and effect
11 to all Class Members. Factually, Defendant’s policies and practices apply class-wide and
12 Defendant’s liability can be determined by facts common to all members of the class. The wage
13 and hour issues are both numerous and substantial, and a class action is the most advantageous
14 method of dealing with the claims of the Settlement Class Members.

15 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because
16 they arise from the same factual basis and are based on the same legal theories applicable to the
17 other Class Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests
18 of the Class. Plaintiffs were injured by the same company-wide practices to which the proposed
19 Settlement Class was subject and seek the same relief. Plaintiffs have already demonstrated
20 their ability to advocate for the interests of the Class by initiating this litigation, undertaking
21 extensive class discovery, and evaluating the proposed settlement to ensure that it is fair.
(Buchsbbaum Decl. ¶41).

22 Additionally, Plaintiffs are represented by competent counsel who has extensive
23 experience in litigating wage and hour class action cases. See Buchsbaum Dec., at §§1-8.
24 Plaintiff’s Counsel have successfully briefed, argued, certified, and gained court settlement
25 approval of the same class-wide causes of action that are at issue in this case. Plaintiff’s
26 Counsel’s wage and hour class action expertise establishes they are well qualified to represent
27 the interests of this Class.
28

1 A class action is superior to a multitude of individual lawsuits. Given the size and
2 amount of each individual Class Member's claim, Class Members likely have little incentive to
3 litigate their claims on an individual basis because the out-of-pocket expense and personal
4 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class
5 treatment is superior to individual, case-by-case adjudication. (Buchsbaum Decl. ¶36).

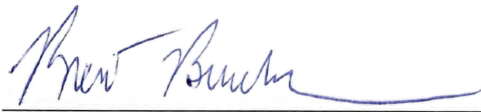
6
7 **V. CONCLUSION**

8 The Parties have negotiated a fair and reasonable settlement of claims. Having
9 appropriately presented the materials and information necessary for final approval, the Parties
10 request that the Court preliminarily approve the settlement.

11
12 Respectfully Submitted,

13 Dated: September 19, 2024

LAW OFFICES OF BUCHSBAUM & HAAG,
A Limited Liability Partnership

15
16 By: 
17 Brent Buchsbaum, Attorney for Plaintiff

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 100 Oceangate, Suite 1200, Long Beach, California 90802.

On September 20, 2024, I served the foregoing document described as:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

The true copies thereof were enclosed in a sealed envelope and addressed as follows:

Counsel for Defendant, Vehicle Protection Specialists, LLC & Daniel Laurent

James P. Carter

Jonathan P. Schmidt

Jackson Lewis, P.C.

200 Spectrum Center Drive, Suite 500

Irvine, California 92618

Telephone: 949-988-5632

Facsimile: 949-885-1360

E-Mail: James.Carter@jacksonlewis.com

Jonathan.Schmidt@jacksonlewis.com

Cindy.Kuno@Jacksonlewis.com

Deborah.Neforos@Jacksonlewis.com

BY U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the U.S. Postal Service in Long Beach, California, in a sealed envelope with postage fully prepaid.

BY OVERNIGHT DELIVERY: I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY PERSONAL SERVICE: I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s). (C.C.P. Section 1011)

BY FACSIMILE: Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at the fax number(s) listed above. The

1 sending facsimile machine issued a transmission report confirming that the transmission was
2 complete and without error.

3 **XX BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
4 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
5 document(s) to be sent from ***kim@buchsbaumhaag.com*** to the person(s) at the e-mail
6 address(es) listed above.

7 **XX STATE** I declare under penalty of perjury under the laws of the State of California that the
8 above is true and correct.

9 I declare that I am employed in the office of a member of the bar of this court at whose
10 direction the service was made.

11 Executed, September 20, 2024, at Long Beach, California.

12 
KIMBERLY KELLY, Declarant