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18 Attorneys for Plaintiff ADRIAN YEPEZ,
19 on behalf of himself and others similarly situated

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF SAN MATEO**

22 ADRIAN YEPEZ, on behalf of himself and
23 other similarly situated,

24 Plaintiff,

25 v.

26 TASTES ON THE FLY SAN FRANCISCO,
27 LLC; and DOES 1 to 100, inclusive,

28 Defendants.

Case No.: 21-CIV-05010

CLASS ACTION

*[Assigned for all purposes to the
Honorable Nicole S. Healy, Dept. 28]*

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

*[Filed concurrently with the Declaration of Eve
Howe in Support; Declaration of Roman
Otkupman in Support; and [Proposed] Order]*

Hearing Information:

Date: May 21, 2025

Time: 2:00 p.m.

Dept.: 28

1 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on May 21, 2025, at 2:00 p.m., or as soon thereafter as
4 the matter can be heard in Department 28 of San Mateo County Superior Court located at Courtroom
5 I, 800 North Humboldt Street, San Mateo, California 94401, Plaintiff ADRIAN YEPEZ (“Plaintiff”)
6 will move for an order granting preliminary approval of the proposed class action settlement on the
7 terms and conditions set forth in the Class Action and PAGA Settlement Agreement and Class Notice
8 (“Settlement” or “Settlement Agreement”) between Plaintiff and Defendant TASTES ON THE FLY
9 SAN FRANCISCO, LLC (“Defendant”) a copy of which is attached to the Declaration of Eve Howe
10 (“Howe Dec.”) as **Exhibit “1.”** Plaintiff will further move that the Order specifically encompass the
11 following:

- 12 1. Certify a class for settlement purposes only;
- 13 2. Appoint the Plaintiff as Class Representative for settlement purposes only;
- 14 3. Appoint Joseph Lavi, Esq., Vincent C. Granberry, Esq., and Eve Howe, Esq. of Lavi
15 & Ebrahimian, LLP as Class Counsel;
- 16 4. Approve the Class Notice in the form attached as **Exhibit “1”** to the Settlement;
- 17 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
18 150 days after the Court grants preliminary approval of the Settlement.

19 Dated: April 29, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

21
22
23 By: /s/ Eve Howe
Joseph Lavi, Esq.
24 Vincent C. Granberry, Esq.
Eve Howe, Esq.
25 Attorneys for Plaintiff ADRIAN YEPEZ, behalf
of himself and others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Adrian Yepez (“Plaintiff”) respectfully submits this memorandum of points and
4 authorities in support of his motion for preliminary approval of the proposed class action settlement
5 with Defendant Taste on the Fly San Francisco, LLC (“Defendant”) (Plaintiff and Defendant are
6 collectively hereinafter referred to as “the Parties”). Plaintiff seeks entry of a proposed order granting
7 preliminary approval of the class settlement which: (1) preliminarily approves the proposed
8 settlement of the class action; (2) approves the form and method for providing notice and directs that
9 notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for
10 settlement purpose; and (4) schedules a final approval hearing date.

11 As consideration for this Settlement, Defendant shall pay a sum equal to One Million Fifty
12 Thousand Dollars and Zero Cents (\$1,050,000.00) (the “Gross Settlement Amount”) to fund the non-
13 reversionary, no claims made settlement of this class action. (Class Action and PAGA Settlement
14 Agreement and Class Notice (“Settlement” or “Settlement Agreement”)), § 1.22 attached as **Exhibit**
15 **“1”** to Declaration of Eve Howe (“Howe Dec.”). The Gross Settlement Amount is inclusive of
16 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel
17 Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administration
18 Expenses Payment as provided by this Settlement. (*Id.*)

19 **II. SUMMARY OF LITIGATION**

20 **A. The Parties**

21 The named Plaintiff worked as an hourly-paid, non-exempt employee for Defendant and seeks
22 to represent approximately 1,027 current and former employees of Defendant who worked in
23 California as hourly-paid, non-exempt employees at any time during the Class Period, and who have
24 not previously released all known and unknown claims against Defendant Taste on the Fly San
25 Francisco, LLC (hereinafter “Class” or “Class Members”). (Howe Dec. ¶3.)

26 Defendant TASTES ON THE FLY SAN FRANCISCO, LLC (“Defendant”) creates
27 innovative airport dining experiences for passengers by operating restaurants that deliver the same
28 quality travelers enjoy at their favorite local restaurants. (Howe Dec. ¶4.)

1 **B. The Complaint and Allegations**

2 This is a proposed employee wage and hour class action and PAGA representative action. On
3 September 16, 2021, Plaintiff filed a class action pursuant to complaint against Defendant for alleged
4 violations of the California Labor Code in the Los Angeles County Superior Court against Defendant
5 (the “Action”). Plaintiff alleged the following: (1) Failure to Pay Wages for All Hours Worked at
6 Minimum Wage in Violation of Labor Code Sections 1194 and 1197, (2) Failure to Pay Overtime
7 Wages for Daily Overtime Worked In Violation Of Labor Code Section 510 and 1194, (3) Failure to
8 Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7 (4) Failure to
9 Authorize or Permit Rest Periods in Violations of Labor Code sections 226.7 (5) Failure to Provide
10 Complete and Accurate Wage Statements in Violation of Labor Code Section 226, (6) Failure to
11 Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in
12 Violation of Labor Code Sections 201, 202, and 203, and (7) Unfair Business Practices, in Violation
13 of Business and Professions Code Sections 17200, *et seq.* Defendant has denied all claims in the
14 Class Action. (Howe Dec. ¶5.)

15 On December 23, 2020, Plaintiff also submitted a notice to the LWDA informing it of his
16 intention to bring a claim for civil penalties pursuant to PAGA. (Howe Dec. ¶6.)

17 On March 11, 2022, Plaintiff filed a First Amended Complaint adding a claim for civil penalties
18 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.*
19 as an eighth cause of action. (Howe Dec. ¶7.)

20 On April 4, 2024, the Parties participated in an all-day mediation presided over by Todd Smith,
21 Esq. which led to an agreement to settle the Action. (Howe Dec. ¶8.)

22 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the Parties’**
23 **Counsel**

24 As a critical part of settlement negotiations, the Parties engaged in extensive informal discovery
25 exchange where Plaintiff’s counsel reviewed and analyzed the following: (1) time records; (2) pay
26 records; (3) information relating other size and scope of the class; (4) data permitting Plaintiff to fully
27 understand the nature and scope of the allegations in the Complaint, including Plaintiff’s time and
28 wage records. (Howe Dec. ¶9.)

1 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
2 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by
3 Plaintiff, and have had multiple conference calls and email exchanges between Plaintiff's counsel and
4 Defendant's counsel. (Howe Dec. ¶10.)

5 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
6 necessary to litigate their disputes through trial and through any possible appeals. (Howe Dec. ¶¶9-
7 30.) Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation,
8 and the difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also
9 aware of the burdens of proof necessary to establish liability for the claims asserted in the Action,
10 both generally and in response to Defendant's compelling defenses thereto, and the difficulties in
11 establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class
12 Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and
13 reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

14 **III. THE SETTLEMENT**

15 The settlement contemplates (i) entry of an Order preliminarily approving the settlement and
16 approving certification of a provisional settlement class, contingent upon final approval of the
17 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

18 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure
19 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit
20 by agreement upon the terms and conditions and for the consideration set forth in the Settlement, a
21 copy of which is attached to the Declaration of Eve Howe as **Exhibit "1."**

22 A summary of the key terms of the Settlement is as follows:

- 23 1. "**Class**" means a person employed by Defendant in California and classified as an hourly, non-
24 exempt employee who worked for Defendant during the Class Period. (Settlement, § 1.5.)
- 25 2. "**Aggrieved Employee**" means a person employed by Defendant in California and classified as
26 an hourly, non-exempt employee who worked for Defendant during the PAGA Period.
(Settlement, § 1.4.)
- 27 3. "**Class Period**" means the period from September 16, 2017, through September 15, 2024.
28 (Settlement, § 1.12.)

- 1 4. **“PAGA Period”** means the period from December 23, 2019, through September 15, 2024.
(Settlement, § 1.31.)
- 2 5. **“Gross Settlement Amount”** means \$1,050,000.00, which is the total amount Defendant
3 agrees to pay under the Settlement except as provided in Paragraph 8 of the Settlement. The Gross
4 Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments,
5 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
6 Service Payment and the Administrator’s Expenses. (Settlement, § 1.22.)
- 7 6. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments
8 in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
9 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
10 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is
11 to be paid to Participating Class Members as Individual Class Payments. (Settlement, § 1.28.)
- 12 7. An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the
13 total number of Workweeks worked by all Participating Class Members during the Class
14 Period and (b) multiplying the result by each Participating Class Member’s Workweeks. Non-
15 Participating Class Members will not receive any Individual Class Payments. The
16 Administrator will retain amounts equal to their Individual Class Payments in the Net
17 Settlement Amount for distribution to Participating Class Members on a pro rata basis.
18 (Settlement, §§ 3.2.4., 3.2.4.2.)
- 19 8. PAGA Penalties in the amount of Twenty Thousand Dollars and Zero Cents \$20,000.00 to
20 be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA
21 PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments. The
22 Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
23 the Aggrieved Employees’ 25% share of PAGA Penalties \$5,000.00 by the total number of
24 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and
25 (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.
26 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
27 Individual PAGA Payment (Settlement, §§ 3.2.5., 3.2.5.1)
- 28 9. Twenty Percent (20%) of each Participating Class Member’s Individual Class Payment will
be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portions are subject
to tax withholding and will be reported on an IRS W-2 Form. The Eighty Percent (80%) of
each Participating Class Member’s Individual Class Payment will be allocated to settlement
of claims for interest and penalties (the “Non-Wage Portion”). The Non-Wage Portions are
not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class
Members assume full responsibility and liability for any employee taxes owed on their
Individual Class Payment. If the Court approves a PAGA Settlement Amount in less than the
amount requested, the Administrator will allocate the remainder to the Net Settlement
Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
(Settlement, § 3.2.4.1, 3.2.5.2.)
10. The Administrator will issue checks for the Individual Class Payments and/or Individual
PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage
prepaid. The face of each check shall prominently state the date (not less than 180 days after
the date of mailing) when the check will be voided. The Administrator will cancel all checks

1 not cashed by the void date. For any Class Member whose Individual Class Payment check or
2 Individual PAGA Payment check is uncashed and cancelled after the void date, the
3 Administrator shall transmit the funds represented by such checks to California Controller's
4 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid
residue" subject to the requirements of California Code of Civil Procedure Section 384, subd.
(b). (Settlement, § 4.4.1, 4.4.3.)

5 **11. The Release by Participating Class Members** is as follows: All Participating Class
6 Members, on behalf of themselves and their respective former and present representatives,
7 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from
8 (i) all claims asserted in Action or any other in the Operative Complaint or any other claims
9 that could have been asserted based on the facts alleged, including but not limited to,
10 minimum wages, overtime and double time wages; meal and rest breaks; failure to maintain
11 accurate employment records; wage statement violations; separation pay violations; and
unfair business practices. Except as set forth in Section 5.3 of the Settlement, Participating
Class Members do not release any other claims, including claims for vested benefits, wrongful
termination, violation of the Fair Employment and Housing Act, unemployment insurance,
disability, social security, workers' compensation, or claims based on facts occurring outside
the Class Period. (Settlement, § 5.2.)

12 **12. The Release by Aggrieved Employees** is as follows: All Aggrieved Employees, including
13 Non-Participating Class Members who are Aggrieved Employees, are deemed to release, on
14 behalf of themselves and their respective former and present representatives, agents, attorneys,
15 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
16 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
17 facts stated in the Operative Complaint, and the PAGA Notice. This release specifically
includes, but is not necessarily limited to, PAGA penalties premised on violations of Labor
Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, 1197, 1198, and the IWC Wage
Orders. (Settlement, § 5.3)

18 **13.** The Parties have agreed to retain Simpluris, to perform the customary duties of Settlement
Administrator (the Administrator"). (Settlement, § 1.2.)

19 **14. To Class Counsel:** A Class Counsel Fees Payment of not more than One Third of the Gross
20 Settlement Amount, which is currently estimated to be Three Hundred Fifty Thousand Dollars
21 and Zero Cents (\$350,000.00), and a Class Counsel Litigation Expenses Payment of not more
than Thirty Thousand Dollars and Zero Cents (\$30,000.00). (Settlement, § 3.2.2.)

22 **15. To Plaintiff:** Class Representative Service Payment to the Class Representative of not more
23 than \$10,000.00 (in addition to any Individual Class Payment and any Individual PAGA
24 Payment the Class Representative is entitled to receive as a Participating Class Member).
(Settlement, § 3.2.1.)

25 **16. To the Administrator:** An Administrator Expenses Payment not to exceed \$15,000.00 except
26 for a showing of good cause and as approved by the Court. To the extent the Administration
27 Expenses are less or the Court approves payment less than \$15,000.00, the Administrator will
retain the remainder in the Net Settlement Amount. (Settlement § 3.2.3.)

28 **17. "Response Deadline"** Deadline" means 60 calendar days after the Administrator mails Notice

to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (Settlement, § 1.43.)

18. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. (Settlement, 7.5.1.)

19. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). (Settlement, § 7.7.2.)

20. **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (Settlement, § 4.3.)

IV. ANALYSIS

A. Class Action Settlements Are Subject To Review And Approval Under The California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

B. This Settlement Is Fair, Reasonable, And Adequate

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice

1 to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
2 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
3 Courts have broad powers to determine whether a proposed settlement is fair under the circumstances
4 of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89
5 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant
6 factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and likely
7 duration of further litigation, the risk of maintaining class action status through trial, the amount
8 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the
9 experience and views of counsel....” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
10 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the
11 factors depending on the circumstances of each case.” (*Wershba, supra*, 91 Cal.App.4th at 245.)
12 Furthermore, courts must give “proper deference to the private consensual decision of the parties”
13 because “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
14 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
15 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
16 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
17 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

18 A proposed class action settlement is presumed fair under the following circumstances: (1)
19 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were
20 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
21 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48
22 Cal.App.4th at 1802.) The Declaration of Class Counsel Eric Naessig demonstrates that the proposed
23 settlement was the product of serious, informed, and non-collusive negotiations and demonstrates
24 counsel’s extensive experience in both employment law as well as class action litigation.

25 **1. The Settlement is the result of serious, informed, and non-collusive**
26 **negotiations.**

27 The Settlement was reached as a result of arm’s-length negotiations facilitated during a April
28 4, 2024, mediation with a highly regarded and experienced wage and hour mediator, Todd Smith

1 Esq., and analysis by Plaintiff's counsel and Plaintiff's expert. (Howe Dec. ¶¶9-30.) While Plaintiff
2 believes in the merits of his case, he also recognizes the inherent risks of litigation and understands
3 the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable
4 decision on class certification, summary judgment, at trial and/or the damages awarded, and/or on an
5 appeal that can take several more years to litigate. (*Id.*)

6 **2. The extent of the information provided through formal and informal**
7 **discovery and the stage of the proceedings support the Settlement.**

8 As described herein, the Parties investigated and evaluated the factual strengths and weaknesses
9 of this case before reaching the proposed Settlement and engaged in sufficient investigation and
10 discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement
11 was reached following probative factual evaluation of Defendant's relevant policies and procedures and
12 review, compilation, and analysis by Plaintiff's counsel and Plaintiff's counsel's expert of the following:
13 (1) the total number of current and former putative class members and aggrieved employees who worked
14 during the relevant time periods; (2) the total number of workweeks at issue during the relevant time
15 periods; (3) the total number of pay periods at issue during the relevant time periods; (4) the average
16 hourly rate for the putative class members; (5) and other relevant information. Further, the Plaintiff's
17 counsel had multiple discussions, calls, and emails with the Defendant's counsel about the disputed
18 factual and legal issues involved in this case, the risks attending further prosecution, including risks
19 related to a contested motion for class certification, and the substantial benefits to be received pursuant
20 to a compromise and settlement of the case as set forth in the Agreement. As such, settlement on the
21 terms agreed to is in the best interest of Plaintiff and the settlement class. (*Id.*)

22 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth
23 above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view
24 of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*
25 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

26 **3. Plaintiff's counsel are experienced in similar litigation.**

27 Experienced counsel, operating at arms-length, have weighed the strengths of the case and
28 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of

1 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding whether
2 to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630
3 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661
4 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

5 Both Plaintiff’s and Defendant’s counsel are experienced in employment, wage and hour and
6 class action matters. Lavi & Ebrahimian LLP and Otkupman Law Firm are well-regarded firms that
7 handle employment matters almost exclusively. (Howe Dec. ¶31.) Joseph Lavi, of Lavi &
8 Ebrahimian, LLP, has been approved in class counsel in numerous actions and has been named a
9 Southern California Super Lawyer the area of Plaintiff’s employment litigation - class action from
10 2011-2025. (*Id.*) Roman Otkupman of Otkupman Law Firm has also been approved in class counsel
11 in numerous actions. (Otkupman Dec. ¶6.) Defendant’s counsel, Fisher & Phillips LLP, is also
12 extremely well-regarded and respected as employment defense counsel. Counsel on both sides share
13 the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and
14 reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of
15 class certification and litigation, and the benefit the settlement confers on the class. (Howe Dec. ¶¶9-
16 30.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses
17 asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

18 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff’s case**
19 **and the risks and costs of further litigation.**

20 Plaintiff and his counsel have concluded it was reasonable to enter into the proposed
21 Settlement. Defendant has vigorously contested and continues to contest liability for the claims
22 asserted in the action. Although Defendant believes that class certification would be unlikely on such
23 claims, it nevertheless agreed to attempt resolution of the case through extensive informal discovery
24 and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

25 There are significant legal uncertainties associated with cases such as this as they can be
26 factually complex and require protracted litigation to resolve. A settlement is not judged solely against
27 what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide
28 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th

1 Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo*
2 *Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and necessary in the
3 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
4 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
5 the public interest may indeed be served by a voluntary settlement in which each side gives ground
6 in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at 250.)

7 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

8 To evaluate a settlement, the trial court must receive “basic information about the nature
9 and magnitude of the claims in question and the basis for concluding that the consideration being
10 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*
11 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit
12 statement of the maximum theoretical recovery:

13 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record
14 in all cases to contain evidence in the form of an explicit statement of the maximum
15 amount the plaintiff class could recover if it prevailed on all its claims—a number
16 which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell
17 claims, require any such explicit statement of value; it requires a record which
allows “an understanding of the amount that is in controversy and the realistic
ranges of outcomes of the litigation.”

18 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

19 Based on the information informally produced by Defendant, Defendant estimates there are
20 approximately One Thousand Twenty-Seven (1,027) Class Members who collectively worked a total
21 of Seventy Thousand Four Hundred Twenty-Six (70,426) Workweeks, and Five Hundred Thirteen
22 (513) Aggrieved Employees who worked a total of Sixteen Thousand Two Hundred Five (16,205)
23 PAGA Pay Periods. These workers received an average rate of pay of \$18.52/hour. (Howe Dec. ¶13,
24 Settlement §8.) Based on Class Counsel’s and Plaintiff’s expert’s analysis of the data, the
25 maximum exposure for Plaintiff’s claims were as follows:

26 With regard to failure to pay wages for all hours worked at minimum wage and overtime,
27 Plaintiff alleged that Defendant routinely required Plaintiff and similarly situated employees to
28 perform work-related tasks while they were off-the-clock during meal breaks, and after clocking out

1 for the end of their shifts, without compensation. Plaintiff estimated there were approximately
2 **\$652,144.76** in damages for unpaid minimum wages [Calculated as follows: 70,426 workweeks x .1
3 hours unpaid per shift x \$18.52 avg. hourly rate x 5 shifts per workweek = **\$652,144.76**]. (Howe Dec.
4 ¶14.)

5 With regard to Plaintiff's Meal Break Claim, Plaintiff alleged that Defendant pressured
6 and/or required Plaintiff and similarly situated employees to work without receiving meal periods.
7 Furthermore, on occasions Defendant did provide meal periods to Plaintiff and similarly situated
8 employees, they were frequently interrupted, untimely, taken while performing work-related tasks,
9 and/or shorter than thirty (30) minutes in violation of California law. Therefore, Plaintiff estimated
10 there was a maximum of approximately **\$2,243,377.97** in damages for meal break violations.
11 [Calculated as follows: 70,426 workweeks x 5 shifts per week x \$18.52 avg. hourly rate x 34.4%
12 violation rate¹ = **\$2,243,377.97**]. (Howe Dec. ¶15.)

13 With regard to Plaintiff's Rest Break Claim, Plaintiff alleged that Defendant failed to provide
14 Plaintiff and similarly situated employees with timely, duty-free, net ten (10) minute rest breaks for
15 every four (4) hours worked or major fraction thereof. Given the foregoing, the maximum that
16 Plaintiff could recover amounted to approximately **\$1,943,391.38**. [Calculated as follows: 70,426
17 workweeks x 5 shifts per week x \$18.52 avg. hourly rate x 29.8% violation rate² = **\$1,943,391.38**].
18 (Howe Dec. ¶16.)

19 With regard to failure to provide complete and accurate wage statements in violation of
20 Labor Code Section 226, with 1,027 employees, an initial penalty of \$50 per employee, and a
21 subsequent penalty of \$100 per pay period, the total amount would be **\$3,012,150.00** [Calculated
22 as follows: 1,027 employees x \$50 initial penalty + (30,635 pay periods with a provable violation³ –
23 1,027 initial penalties) x \$100 subsequent penalty = **\$3,012,150.00**]. (Howe Dec. ¶17.)

24 With regard to failure to provide employees a continuation of their wages from the day their
25 unpaid wages were due, until paid, up to a maximum of 30 days, under Labor Code Sections 201,

26 _____
27 ¹ Plaintiff's expert found that approximately 34.4% of shifts contained a meal break violation.

² Plaintiff's expert found that approximately 29.8% of shifts contained a rest break violation.

28 ³ Plaintiff's expert found that approximately 87% of pay periods had at least one unique meal break violation. As these violations would be the easiest to prove using clock records, they are used as the basis for assessing penalties under Labor Code Section 226. Defendant's records additionally show 2 workweeks per pay period.

202, and 203, with approximately 670 former employees, the maximum penalty would equal approximately **\$2,978,016.00** [Calculated as follows: 670 former employees X \$18.52 average rate of pay X 8 hours per day X 30 days = **\$2,978,016.00**]. (Howe Dec. ¶18.)

As such, Plaintiff's maximum potential recovery in this matter, excluding PAGA penalties, would amount to approximately \$10,829,080.11. The settlement reached in this matter was \$1,050,000.00 or approximately 9.7% of potential exposure. However, of the maximum potential recovery, \$5,990,166.00 is attributable to penalties under Labor Code Sections 201, 202, 203, and 226. Penalties under these Labor Code sections require that the violations in question be "willful" (Labor Code Section 203) and "knowing and intentional" (Labor Code Section 226). Additionally, violations under these Labor Code sections are entirely derivative on the other alleged claims for failure to pay minimum and overtime wages and failure to provide meal and rest breaks and/or premium wages. Assuming a reasonable discount of 50% for these claims, the maximum potential recovery is reduced to \$7,833,977.11, with a resulting exposure of 13.4%. (Howe Dec. ¶19.)

Regarding the PAGA penalty exposure analysis, according to the data informally produced by Defendant in this case, during the relevant PAGA period (from December 23, 2019, through September 15, 2024) there are approximately 16,205 pay periods for approximately 513 aggrieved employees. (Howe Dec. ¶20.)

Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour class action cases that settle, which are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (granting final approval

1 of \$10,000 in PAGA penalties out of a total settlement amount of \$2,500,000); *Garcia v. Gordon*
2 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012)
3 (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
4 \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1
5 (N.D. Cal. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties out of a total
6 settlement amount of \$6,900,000). In these settlements, the parties generally maximize statutory
7 penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS 169057, 2012 WL
8 5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement amount of
9 \$2,500,000). (Howe Dec. ¶21.)

10 Plaintiff recognizes that PAGA claims generally settle for a mere fraction of multiple
11 “stacked” PAGA penalties as is described above, but more typically resolve for a reasonable fraction
12 of the unstacked PAGA exposure. Here, since the claims for minimum wages, overtime wages, meal
13 and rest periods, wage statements, and failure to timely pay all unpaid wages following separation of
14 employment are all premised at least partially on the same factual basis, (i.e. hourly non-exempt
15 employees who were deprived of minimum wages, overtime wages, meal period and rest periods
16 wage statements, and wages following separation of employment), stacking these penalties could
17 arguably be overly punitive. Instead, seeking only penalties for minimum wages to account for the
18 on-call/standby time and overtime wages, in far more reasonable and less punitive penalties that
19 eliminate the “stacked” penalties for each Labor Code section violated as a result of the same conduct.
20 As a result, Defendant could argue Plaintiff and the aggrieved employees may only be able to recover
21 penalties under minimum wage claim, overtime wage, and meal and rest period violations. Thus, if
22 Defendant is correct on the “stacking” issue, the maximum theoretical penalties would be
23 substantially less under Defendant’s view of the law. (Howe Dec. ¶22.)

24 Second, Plaintiff’s calculation also assumes that Plaintiff’s PAGA claims could be tried in a
25 manageable manner that comports with due process, which Defendant vigorously disputes. (Howe
26 Dec. ¶23.)

27 Third, the Court has discretion under PAGA to reduce the amount of any penalties awarded
28 for equitable reasons. (Howe Dec. ¶24.)

1 Fourth, Defendant would argue that PAGA penalties would be limited in any event. As
2 discussed in detail above, Defendant denies any liability. Moreover, Defendant would argue that
3 even if Plaintiff prevailed, the recoverable penalties under PAGA are minimal. Indeed, courts that
4 have considered the issue have refused to “stack” PAGA penalties. See *Carrington v. Starbucks*
5 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
6 PAGA penalty reduction to \$5 per pay period); accord *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th
7 809. Moreover, Defendant would argue that Plaintiff is not entitled to recover PAGA penalties at
8 the subsequent violation rate of \$100 per pay period. California’s appellate courts have held that
9 “[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not
10 the commissioner or court chooses to impose penalties), the employer cannot be presumed to be
11 aware [of the violation]” and therefore, until a Court or the Commissioner issues a finding of a
12 violation, the initial \$50 violation rate applies for each pay period in which the alleged violation
13 occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; accord *Amalgamated*
14 *Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL
15 2448430, at *9 (“[u]nder California law, courts have held that employers are not subject to
16 heightened penalties for subsequent violations unless and until a court or commissioner notifies the
17 employer that it is in violation of the Labor Code”). Thus, Defendant would argue that even if the
18 Plaintiff was able to establish any violation of the Labor Code, the PAGA penalties assessed for
19 these violations will be computed at the \$100 rate, as opposed to the \$100 per pay period rate at
20 maximum, and there is a likelihood that a further reduction of the penalty to \$5 per pay period as
21 approved in *Carrington* would apply given Defendant’s compliance with the Labor Code as
22 discussed above. (Howe Dec. ¶25.)

23 Finally, Plaintiff anticipates that Defendant would argue that the Court might follow the
24 logic in *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 and assess only the initial
25 \$50 violation rate for each pay period (i.e. at \$50 per pay period x 16,205 pay periods at issue),
26 therefore it is likely Defendant’s maximum exposure is actually only \$810,250.00. Defendant likely
27 would have argued that this Court would use the *Carrington* valuation as a ceiling for assessing
28

1 PAGA penalties and that this amount (i.e., \$81,025.00) was its true “worst case scenario” exposure).
2 (Howe Dec. ¶26.)

3 In sum, the settlement in the instant case provides for a gross fund value of \$1,050,000.00
4 with a PAGA allocation of \$20,000.00 with 75% (\$15,000) payable to the LWDA and 25% (\$5,000)
5 distributed to the Aggrieved Employees which falls squarely within the range of reasonableness for
6 PAGA allocations outlined in the case law above. (Howe Dec. ¶27.)

7 Defendant has however maintained significant defenses to the above claims as follows:
8 Regarding Plaintiff’s claims for unpaid minimum wages, overtime wages, Defendant would likely
9 argue that properly paid all minimum wages and overtime wages owed. Regarding meal periods,
10 Defendant could argue that it provided meal periods to Plaintiff and similarly situated employees of
11 no less than thirty (30) minutes for each five-hour period of work as required by law. Defendant could
12 contend it had compliant meal period policies and issued those to all exempt Class Members. With
13 respect to Plaintiff’s rest period claim, Defendant could contend that it provided compliant written
14 rest period policies and therefore Plaintiff and the Class were on notice of what rest periods should
15 have been taken. Additionally, Defendant could contend any alleged wage statement violations
16 could not be shown to be “knowing and intentional” given its good-faith defenses, and that Plaintiff
17 cannot show he or other employees “suffer[ed] injury,” as required by Labor Code § 226(e).
18 Defendant would likely argue that wage statements always accurately reflected hours worked and
19 amounts paid to employees. Based on the foregoing, Defendant could argue that Plaintiff and Class
20 Members were paid out upon separation of employment for all wages owed, and that Defendant
21 believed, in good faith, that it was properly paying all wages to separating employees. For these
22 reasons, Defendant could conclude that Plaintiff would not likely prevail on their claims. (Howe
23 Dec. ¶28.)

24 If Plaintiff continued litigating this matter, the class members could potentially receive
25 **nothing** if the court agreed with Defendant’s position or if Defendant was able to defeat certification
26 based on the individual inquiries that would be required regarding Plaintiff’s off the clock claims and
27 meal and rest claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove
28 Defendant faced exposure under Plaintiff’s derivative claims and acted intentionally and *willfully* in

1 order to receive the additional penalties under Labor Code Sections 203, 204, and 226. As such,
2 Plaintiff's decision to settle this matter was in the best interest of the Class Members. (Howe Dec.
3 ¶29.)

4 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
5 reversionary, no-claims made settlement, which distributes the Net Settlement Amount on a pro rata
6 basis based on the number of Workweeks each Participating Class Member worked for Defendant
7 during the Class Period. (Settlement, §3.2.4.) The 25% portion of the PAGA Settlement Amount
8 allocated to Aggrieved Employees will be distributed to each Aggrieved Employee who worked
9 during the PAGA Period based on their individual number of PAGA Period Pay Periods during the
10 PAGA Period. (Settlement, §3.2.5.1.) Settlement Class Members will have no less than one hundred
11 eighty (180) days to cash their checks. Any funds not distributed after the expiration of the Individual
12 Class Payment checks shall escheat to the California Controller's Unclaimed Property Fund to in the
13 name of the Class Member. (Settlement, § 4.4.3.) (Howe Dec. ¶30)

14 The Gross Settlement Amount is reasonable in light of the risks involved in this case—
15 including the prospect of a potential adverse summary judgment ruling, class certification issues as
16 well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of
17 willfulness and/or injury required for certain penalties.

18 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class
19 based on the negotiations and a detailed knowledge of the issues present in this action. The affirmative
20 defenses asserted by Defendant, the prospect of a potential adverse summary judgment ruling,
21 preemption issues, class certification issues as well as the uncertainty of class certification, the
22 difficulties of complex litigation, the lengthy process of establishing specific damages and various
23 possible delays and appeals were also carefully considered by Class Counsel in agreeing to the
24 proposed Settlement. In light of the above, the proposed Settlement is well within the "ballpark" of
25 reasonableness and should be granted preliminary approval.

26 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

27 The court may make an order approving certification of a provisional settlement class after the
28 preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes,

1 courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v.*
2 *Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is anticipated
3 in a settlement class case, so the case management issues inherent in the ascertainable class
4 determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*
5 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for
6 settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff’s class for
7 settlement purposes only.

8 The requirements under California Code of Civil Procedure Section 382 are all met for the
9 purposes of certifying this case for settlement purposes:

10 • Numerosity: The settlement class consists of approximately 1,027 Class Members.
11 Thus, the requirement of numerosity is easily met because joinder of 1,027 individual plaintiffs into
12 a single case is otherwise impracticable in light of the circumstances of this case.

13 • Typicality: The claims of the class representative are typical of the claims of the class
14 members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay
15 minimum, overtime wages, provide or authorize meal and rest periods, failure to provide complete
16 and accurate wage statements, and failure to pay all wages due upon separation of employment) as
17 the class as a whole did and, thus, the claims of the named Plaintiff fairly represents the claims of the
18 class as a whole.

19 • Ascertainability: The proposed “Class” is easily ascertainable based on Defendant’s
20 own payroll records.

21 • Adequacy: Plaintiff has proven to be an adequate class representative. He has
22 conducted himself diligently and responsibly in representing the class in this litigation, he understands
23 his fiduciary obligations, and he has actively participated in the prosecution of this case. (Howe Dec.
24 ¶35.) Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding
25 of his work environment and requirements. Plaintiff remained actively engaged in the settlement
26 negotiations following mediation that were ultimately required to finalize settlement. (*Id.*) Further,
27 Plaintiff does not have any interest that is adverse to the interests of the other class members. (*Id.*)
28 Moreover, proposed class counsel is adequate to represent the class for settlement purposes and has

1 been appointed as class counsel before by this Court as well as both State and Federal Courts. (Howe
2 Dec. ¶31.)

3 • Commonality: Many common issues of law and fact unite the class. The common
4 questions of law and fact include, but are not limited to:

- 5 1) Whether Defendant failed to pay minimum and overtime wages;
- 6 2) Whether Defendant failed to pay overtime wages at the regular rate of pay;
- 7 3) Whether Defendant failed to provide the Class Members meal periods;
- 8 4) Whether Defendant failed to provide the Class Members rest periods;
- 9 5) Whether Defendant failed to provide the Class Members complete and
10 accurate wage statements;
- 11 6) Whether Class Members are entitled to waiting time penalties for Defendant's
12 failure to pay all wages upon separation of employment; and
- 13 7) Whether Defendant violated Business and Professions Code section 17200.

14 • Superiority: A class action is superior to other available means for the fair and efficient
15 adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class
16 treatment will permit a large number of similarly-situated persons to prosecute their common claims
17 in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort
18 and expense that numerous individual actions would engender.

19 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

20 The proposed Class Notice in the form attached to the Settlement as Exhibit 1, should be
21 approved for dissemination to the Class Members. This document informs the Class of the terms of
22 the Settlement, of their right to receive their proportional share of the Settlement and the manner in
23 which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and
24 of their right to appear in person or by counsel at the final approval hearing and to be heard regarding
25 approval of the Settlement. Adequate periods of time are provided by each of these procedures.
26 Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice will
27 identify the information upon which the Class Member's share will be calculated as well as the
28 estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE

Plaintiff's Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Settlement

1 Amount or Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00), Class Counsel's
2 costs not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00)— for the time spent
3 litigating this matter as well as expenses incurred in the prosecution of the action thus far. Defendant
4 will not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well
5 within the historical range of attorneys' fee awards under the common fund theory, which is generally
6 from 20% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive,
7 and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits
8 achieved by Plaintiff's counsel for the Class Members. Plaintiff's counsel diligently litigated and
9 investigated this case.

10 California courts have recognized that an appropriate method for awarding attorney's fees in
11 class actions is to award a percentage of the "common fund" created as a result of the settlement.
12 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15
13 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,
14 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common
15 fund is fairness to the successful litigant, who might otherwise receive no benefit because his
16 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others
17 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
18 encouragement of the attorney for the successful litigant, who will be more willing to undertake and
19 diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that
20 he will be properly and directly compensated should his efforts be successful. (*City & County of San*
21 *Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme Court stated: "[O]ne
22 who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits
23 may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State,*
24 *supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the
25 common fund doctrine has been applied "consistently in California when an action brought by one
26 party creates a fund in which other persons are entitled to share." (*City & County of San Francisco*
27 *v. Sweet, supra*, 12 Cal. 4th at 110.)

28 Several courts have expressed frustration with the alternative "lodestar" approach for

1 deciding fee awards, which usually involves wading through voluminous and often indecipherable
2 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal
3 1989)] 723 F. Supp. 1373, 1375[.]) The percentage approach is preferable to the lodestar because: (1)
4 it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution
5 of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
6 demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth
7 Circuit now routinely uses the percentage of the common fund approach to determine the award of
8 attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir.
9 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

10 Plaintiff's counsel's request for fees equal to one-third (1/3) of the Gross Settlement Amount
11 is within the range of reasonableness. Historically, courts have awarded percentage fees in the range
12 of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig., supra*,
13 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what
14 is a reasonable percentage of a common fund...Usually 50 per cent of the fund is the upper limit on
15 a reasonable fee award from a common fund, in order to assure that fees do not consume a
16 disproportionate part of the recovery obtained for the class, though somewhat larger percentages are
17 not unprecedented." (Newberg, *supra*, §14.6.)

18 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation
19 associated with this class action on a pure contingency basis. The factual and legal issues posed in
20 this case were highly disputed, and there were also risks as to whether or not a class would be
21 certified, leaving a large number of putative class members unlikely to receive any recovery.

22 Based on Class Counsel's past experience in class action wage and hour litigation, it is safe
23 to state that Class Counsel is very likely to be called upon, after the Class Notice has been sent, to
24 expend substantial amounts of additional time to help Class Members understand the terms of the
25 proposed Settlement. It is also likely that, even after final approval of the Settlement has been
26 granted, Class Counsel will be called upon to expend additional amounts of time in the presentation
27 and resolution of contests and questions relating to Class Members' allocation under the terms of the
28 proposed Settlement, as to the amounts of individual claims and perhaps other individual issues.

1 The Court should preliminarily approve the requested attorney's fees and costs, which are
2 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great
3 risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by
4 Defendant, and are well within established guidelines. The Class Members will also be notified of the
5 requested amount and have an opportunity to object to the requested fees.

6 **VIII. THE REQUESTED SERVICE AWARD IS REASONABLE**

7 The named Plaintiff is entitled to a Service Payment for his service as class representative
8 and the risks associated with his role as Class Representative and named Plaintiff in this action.
9 Plaintiff understood and continues to understand his role as Class Representative, he has protected
10 the interests of Class Members during the pending of this matter and will continue to do so. (Howe
11 Dec. ¶35.) Plaintiff has spent hours in meetings and conferences with counsel to get a better
12 understanding of his work environment. (*Id.*) Even after mediation, he continued to be engaged with
13 counsel for the months of the continued negotiations that it took to ultimately finalize a settlement
14 as well as understanding and discussing the settlement agreement with the attorneys. (*Id.*) Further,
15 Plaintiff does not have any interest that is averse to the interests of the other class members. (*Id.*)
16 Defendant will not oppose the application for an enhancement of \$10,000 to Plaintiff as the Class
17 Representative from the Gross Settlement Amount for his services to the Class in this action. Class
18 Counsel can attest that Plaintiff devoted a proportionate amount of time and work assisting counsel
19 in the case, communicating with counsel frequently, providing documents and information regarding
20 their employer and employment, which led to increase in the value and ultimate success of the
21 Settlement. (*Id.*)

22 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

23 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 24 i. Not later than fifteen (15) calendar days after the Court grants Preliminary Approval
25 of the Settlement, Defendant will deliver the Class Data to the Administrator, in the
form of a Microsoft Excel spreadsheet. (Settlement, § 4.2.)
- 26 ii. Using best efforts to perform as soon as possible, and in no event later than fourteen
27 (14) days after the Court grants Preliminary Approval of the Settlement, the
28 Administrator will send to all Class Members identified in the Class Data, via first-
class United States Postal Service ("USPS") mail, the Class Notice with Spanish
translation. (Settlement, § 7.4.2.)

- 1 iii. If a Class Member wishes to submit a Request for Exclusion or Objection they may
2 do so within sixty (60) calendar days from the date the Class Notice is mailed to
3 them (“Response Deadline”). (Settlement, § 1.43.)
- 4 iv. The filing date for the Motion for Final Approval of the Class Action Settlement,
5 and Motion for Final Approval of Plaintiff’s Attorneys’ Fees and Costs and Service
6 Payment to the Class Representative will be determined by the Court.
- 7 v. The Final Fairness and Approval Hearing date will be determined by Court. The
8 parties request that the Final Fairness and Approval Hearing be set approximately
9 one hundred fifty (150) days following the Court’s granting of preliminary approval
10 of the proposed Class Action Settlement.

11 **X. CONCLUSION**

12 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and
13 immediate payment to Class Members; it is non-collusive; and it was achieved as the result of
14 informed, extensive, and arms’ length negotiations conducted by counsel for respective parties who
15 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties
16 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the
17 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a
18 date for a final approval hearing.

19 Dated: April 29, 2025,

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

20 By: /s/ Eve Howe
21 Joseph Lavi, Esq.
22 Vincent C. Granberry, Esq.
23 Eve Howe, Esq.
24 Attorneys for Plaintiff ANDRES YEPEZ on
25 behalf of himself and others similarly situated