

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Melissa A. Huether, Esq. (SBN 316604)
Pooja V Patel, Esq. (SBN 317891)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
ppatel@lelawfirm.com
mhuether@lelawfirm.com

Sahag Majarian II (SBN 146621)
sahagii@aol.com
LAW OFFICES OF SAHAG MAJARIAN II
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff SAUL HERNANDEZ MEJIA
on behalf of himself and others similarly situated

[Additional Counsel on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE**

SAUL HERNANDEZ MEJIA, on behalf of
himself and others similarly situated;
MANUEL ENRIQUEZ, on behalf of himself,
others similarly situated, and other aggrieved
employees,

Plaintiffs

v.

SWISSTEX CALIFORNIA, INC.; and DOES
1 to 100, inclusive,

Defendants.

Case No.: 21STCV02796 (*Mejia Class*)

Consolidated with Case No. 21STCV04668
(*Enriquez*) and Case No. 21STCV12242 (*Mejia*
PAGA)

CLASS ACTION

*[Assigned for all purposes to the Hon. Yvette M.
Palazuelos, Dept. 9]*

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

*[Filed concurrently with the Declaration of
Melissa A. Huether in Support; Declaration of
Justin F. Marquez in Support; Declaration of
Saul Hernandez Mejia in Support; and
[Proposed] Order]*

Hearing Information:

Date: January 5, 2023

Time: 10:00 a.m.

Dept.: SSC9

Justin F. Marquez (SBN 262417)

justin@wilshirelawfirm.com

Benjamin H. Haber (SBN 315664)

benjamin@wilshirelawfirm.com

Arrash Fattahi, Esq. (SBN 333676)

afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Boulevard, 12th Floor

Los Angeles, California 9010

Telephone: (213) 381 – 9988

Facsimile: (213) 381-9989

Attorneys for Plaintiff MANUEL ENRIQUEZ,
on behalf of himself and all others similarly situation

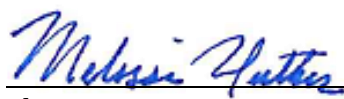
1 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**
2 **ATTORNEYS OF RECORD:**

3 **NOTICE IS HEREBY GIVEN** that on January 5, 2023, at 10:00 a.m., or as soon thereafter
4 as the matter can be heard in Department SSC9 of the Los Angeles County Superior Court located
5 at 312 N. Spring St., Los Angeles, California 90012, Plaintiffs Saul Hernandez Mejia and Manuel
6 Enriquez ("Plaintiffs") will move for an order granting preliminary approval of the proposed class
7 action settlement on the terms and conditions set forth in the Stipulation of Settlement
8 ("Settlement" or "Settlement Agreement") between Plaintiffs and Defendant Swisstex California,
9 Inc. ("Defendant "), a copy of which is attached to the Declaration of Melissa A. Huether ("Huether
10 Dec.") as **Exhibit "1."** Plaintiffs will further move that the Order specifically encompass the
11 following:

- 12 1. Certify a class for settlement purposes only;
- 13 2. Appoint the Plaintiffs as Class Representatives for settlement purposes only;
- 14 3. Appoint Lavi & Ebrahimian, LLP, Law Offices of Sahag Majarian II, and Wilshire
15 Law Firm as Class Counsel;
- 16 4. Approve the Notice of Settlement of Class Action in the form attached as **Exhibit**
17 **"A"** to the Settlement;
- 18 5. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately
19 120 days after the Court grants preliminary approval of the Settlement.

20
21 Dated: December 5, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
LAW OFFICES OF SAHAG MAJARIAN II
WILSHIRE LAW FIRM

22
23
24 By: 
25 Joseph Lavi, Esq.
26 Melissa A. Huether, Esq.
27 Justin F. Marquez, Esq.
28 Benjamin H. Haber, Esq.
Attorneys for Plaintiffs Saul Hernandez Mejia and
Manuel Enriquez and Other Class Members

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Saul Hernandez Mejia and Manuel Enriquez (Plaintiffs”) respectfully submit this memorandum of points and authorities in support of their motion for preliminary approval of the proposed class action settlement with Defendant Swisstex California, Inc. (“Defendant”) (Plaintiffs and Defendant are collectively hereinafter referred to as “the Parties”). Plaintiffs seek entry of a proposed order granting preliminary approval of the class settlement which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form and method for providing notice and directs that notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval hearing date.

As consideration for this Settlement, Defendant shall pay a sum equal to Nine Hundred Seventy-Five Thousand Dollars (\$975,000.00) (the “Settlement Amount”) to fund the non-reversionary, no claims made settlement of this class action. (Stipulation of Settlement (“Settlement,” “Settlement Agreement,” or “Stipulation”)), § I.Q. attached as **Exhibit “1”** to Declaration of Melissa A. Huether (“Huether Dec.”). The Settlement Amount is inclusive of settlement payments to Class Members, all attorneys’ fees and costs, the enhancement fees to Named Plaintiffs for their services as class representatives, PAGA Settlement, and Settlement Administration Costs as provided by this Settlement. (*Id.*)

II. SUMMARY OF LITIGATION

A. The Parties

The named Plaintiffs worked as hourly non-exempt employees of Defendant and seek to represent current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Settlement Period. The “Settlement Period” is the time from January 22, 2017 through May 31, 2022. Plaintiff Saul Hernandez Mejia worked for Defendant from in or around 2017 until on or about April 24, 2020 and again from approximately September 23, 2020 to his separation in November 2021. Plaintiff Manuel Enriquez worked for Defendant from in or around April 2020 until in or around October 2020. Based on information

provided by Defendant, there are approximately 167 class members. (hereinafter “Settlement Class” or “Settlement Class Members”). (Huether Dec. ¶3.)

B. The Complaint and Allegations

This is a proposed employee wage and hour class action case. On January 22, 2021, Plaintiff Mejia filed a class action complaint against Defendant for alleged violations of the California Labor Code in the Los Angeles County Superior Court (the “Action”). Defendant denied all claims in the Action. (Huether Dec. ¶4.)

On February 5, 2021, Plaintiff Enriquez filed a class action complaint against Defendant in the Los Angeles County Superior Court, Case No. 21STCV04668, for Defendant’s alleged violations of the Labor Code (“Enriquez Action”). (Huether Dec. ¶ 5.)

On April 1, 2021, Plaintiff Mejia filed a representative action for civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“Mejia PAGA Action”). Plaintiff Mejia provided notice to the LWDA of his intent to bring a claim for civil penalties on January 22, 2021. The LWDA did not respond. (Huether Dec. ¶6.)

On April 1, 2021, the Court entered an order relating this case with the Enriquez Action. (Huether Dec. ¶7.)

On May 19, 2021, pursuant to the Court’s April 29, 2021 Order, Plaintiffs filed a Consolidated Complaint thereby consolidated the Action with the Enriquez Action. (Huether Dec., ¶ 8.)

On August 27, 2021, the Plaintiffs filed a First Amended Consolidated Complaint adding Plaintiff Mejia’s PAGA claim as alleged in the separately filed Mejia PAGA Action. (Huether Dec. ¶9.)

On October 18, 2021, after extensive informal discovery and data exchange, the Parties attended a mediation session with Hon. Lisa Hart Cole (Ret.), a well-respected mediator experienced in mediating wage and hour class and representative actions. As a result of the mediation, the Parties entered the Settlement Agreement. (Huether Dec. ¶10.)

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1 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the**
2 **Parties' Counsel**

3 On October 18, 2021, the Parties participated in a full-day mediation session with Hon. Lisa
4 Hart Cole (Ret.), a highly experienced and well-regarded class action mediator. As a critical part of
5 settlement negotiations, the Parties engaged in extensive informal discovery which included
6 production of approximately 50% of the time and pay data, calculation of the total number of
7 workweeks worked by class members, as well as information regarding number of current and
8 former employees; number of pay periods; average rate of pay; number of pay periods, and
9 Plaintiffs' counsel's analysis of both the aforementioned data as and Defendant's relevant policies
10 and procedures, and multiple iterations of Defendant's employee handbook, California supplements
11 to the handbook, and trainer schedules. (Huether Dec. ¶10.)

12 Counsel for the Parties have investigated the law as applied to the facts discovered regarding
13 the alleged claims of Plaintiffs and potential defenses thereto, and the potential damages claimed by
14 Plaintiffs, and multiple conference calls and email exchanges between Plaintiffs' counsel and
15 Defendant's counsel. (Huether Decl. ¶¶8-10.)

16 Plaintiffs and Class Counsel recognize the expense and length of continued proceedings
17 necessary to litigate their disputes through trial and through any possible appeals. (*Id.*) Plaintiffs
18 have also taken into account the uncertainty and risk of the outcome of further litigation, and the
19 difficulties and delays inherent in such litigation. (*Id.*) Plaintiffs and Class Counsel are also aware of
20 the burdens of proof necessary to establish liability for the claims asserted in the Action, both
21 generally and in response to the compelling defenses Plaintiffs anticipated Defendant to bring, and
22 the difficulties in establishing damages for the Class Members. (*Id.*) Based on the foregoing,
23 Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a
24 fair, adequate and reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

25 Defendant denies each of the allegations and claims asserted against them in the Litigation.
26 However, Defendant nevertheless desires to settle the Litigation for the purpose of avoiding the
27 burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the
28 controversies engendered by the Litigation. (Settlement, §§ II.D). Substantial amounts of time,
energy and resources of Defendant has been devoted and, unless this Settlement is made, will

1 continue to be devoted to the defense of the claims asserted by Plaintiffs and Class Members. (*Id.*)
2 Defendant has also taken into account the risks of further litigation in reaching their decision to
3 enter into this Settlement. (*Id.*) Despite continuing to contend they are not liable for any of the
4 claims set forth by Plaintiffs in the Action, Defendant has, nonetheless, agreed to settle in the
5 manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the
6 Action. (*Id.*)

7 **III. THE SETTLEMENT**

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

11 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure
12 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit
13 by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a
14 copy of which is attached to the Declaration of Melissa A. Huether as **Exhibit “1.”** A summary of
15 the key terms of the Settlement is as follows:

- 16 1. “Class Members” or “Settlement Class” means all current and former hourly-paid or
17 non-exempt employees who worked for Defendant within the State of California at
18 any time during the Settlement Period. (Stipulation, § I.D.)
- 19 2. “Settlement Period” means the time period from January 22, 2017, through May 31,
20 2022. (Stipulation, § I.R.)
- 21 3. “Settlement Amount” means the sum of Nine Hundred and Seventy-Five Thousand
22 Dollars and Zero Cents (\$975,000.00), which shall be paid by Defendant, and from
23 which all Individual Settlement Payments, Court-approved attorneys’ fees and
24 Litigation costs, Administrative Costs, enhancement to Named Plaintiffs, statutory
25 penalties, interest, and PAGA Settlement. (Stipulation, § I.Q.)
- 26 4. “Net Settlement Amount” or “Net Settlement Fund” means the Settlement Amount
27 minus any award of attorneys’ fees and Litigation costs, Administrative Costs,
28 enhancement fees to the Named Plaintiffs, and penalties recoverable pursuant to
California’s Private Attorney General Act (“PAGA”) (the “PAGA Settlement”).
(Stipulation, § I.L.)

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- 1 5. An "Individual Settlement Payment" for each Class Member will then be determined
2 by multiplying a Class Member's workweeks worked during the Settlement Period
3 ("Eligible Workweeks") by the Workweek Point Value. The Individual Settlement
4 Payment will be reduced by any required legal deductions, for each participating
5 Class Member. (Stipulation, §§ X.)
- 6 6. As to distribution of PAGA penalties, the Settlement Administrator will calculate the
7 total number of workweeks for all Participating PAGA Members who were
8 employed by any Defendants during the PAGA Period ("Total PAGA Workweeks").
9 The value of each PAGA Workweek shall be determined by the Settlement
10 Administrator by dividing 25% of the total amount the Court approves in PAGA
11 penalties by the total number of PAGA Workweeks available to Participating PAGA
12 Members ("PAGA Workweek Point Value"). Each payment to Participating PAGA
13 Members shall be treated as 100% penalties. (Settlement, § X)
- 14 7. Individual Settlement Payments reflect settlement of a dispute regarding wages,
15 interest, and penalties. Individual Settlement Payments will be allocated as follows:
16 15% wages ("wage portion"), 85% penalties and interest ("non-wage portion"
17 (Settlement, § XV.)
- 18 8. Any checks issued by the Settlement Administrator to Settlement Class Members
19 and PAGA Group Members will be negotiable for at least one hundred eighty (180)
20 calendar days. If a Settlement Class Member or PAGA Group Member does not cash
21 his or her settlement check within 180 days, the uncashed funds, subject to Court
22 approval, shall be provided to the California Unclaimed Property Fund, pursuant to
23 California Civil Procedure Code § 384. (Settlement, § XI.C.)
- 24 9. Upon the date on which Defendant fully funds the settlement and the settlement
25 becomes Effective, Named Plaintiffs and all members of the Settlement Class, except
26 those that make a valid and timely request to be excluded from the Settlement Class
27 and Settlement, waive, release, discharge, and promise never to assert in any forum
28 any and all wage-related claims that were alleged in the Litigation or which could
 have been alleged in the Litigation based on the facts asserted in the Litigation
 arising during the Settlement Period against Defendant, and its parents, subsidiaries,
 affiliates, officers, shareholders, directors, agents, employees, attorneys, and
 insurers, including the following claims: 1) all claims alleged in the operative
 complaint or arising from the factual allegations contained therein, for the failure to
 pay overtime or double time wages owed pursuant to California Labor Code §§ 204,
 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute under
 any theory of liability; 2) all claims alleged in the operative complaint, under any
 legal theory of liability, for the failure to pay all wages of any kind, including any
 minimum wage or straight time wages, owed pursuant to California Labor Code §§
 204, 510, 1194, 1194.2, and 1198, the IWC Wage Orders, or any comparable federal
 statute under any theory of liability; 3) all claims alleged in the operative complaint,
 under any legal theory of liability, for failure to provide meal periods pursuant to
 California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims
 alleged in the operative complaint, under any legal theory of liability, for the failure

to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims alleged in the operative complaint, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b); 6) all claims alleged in the operative complaint, under any legal theory of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; 7) all claims alleged in the operative complaint, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 8) all claims alleged in the operative complaint, under any legal theory of liability, for penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*); 9) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 10) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties of any kind arising from an alleged wage statement violations pursuant to California Labor Code §§ 226 and 1174.5; and 11) all claims alleged in the operative complaint, under any legal theory of liability, for any penalties or any other amounts that could be potentially owed to Class Members arising out of and/or related to the allegations in the Lawsuit arising during the Settlement Period, including penalties owed pursuant to California Labor Code §§ 210, 226.3, 558, and 1197.1. (Settlement, § VII.A)

10. The Parties have agreed to retain Simpluris, Inc. to perform the customary duties of Settlement Administrator (the “Settlement Administrator”). (Settlement, § I.P.)
11. Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$325,000, which represents 33 1/3% of the Settlement Amount for all past and future attorneys’ fees necessary to prosecute, settle and administer the Litigation and the Settlement. Additionally, Defendant shall not oppose an application by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$35,000.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and the Settlement. (Settlement, § XIII.)
12. Defendant shall not oppose an application by Named Plaintiffs, and each of Named Plaintiffs shall not seek or receive an amount in excess of \$10,000.00 for each of their participation in and assistance with the Litigation (*i.e.*, Named Plaintiffs’ class representative enhancement/service award). Any enhancement awarded to Named Plaintiffs by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be reported on IRS Form 1099. (Settlement, § XIV.)
13. “Response Deadline” means the last date for Class Members to submit Requests to be Excluded, disputes or Objections. The Response Deadline shall be forty-five (45) days after the Settlement Administrator has postmarked the Notice for mailing to Class Members, subject to adjustment in the case of re-mailings. Class Members to whom Notice Packets are re-sent after having been returned undeliverable to the Settlement Administrator shall have an additional fifteen (15) calendar days after the

Response Deadline, to submit the Request to be Excluded, Objection, or dispute. (Settlement, § IX.A.)

14. The Notice shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. To be valid, the written Request to be Excluded must: (1) state the Class Member's name, address, telephone number, and the last four digits of your Social Security number; (2) be dated; (3) state that the Class Member does not wish to be bound by the Settlement and wishes to opt-out of the Settlement; and (4) be signed by the Class Member. Any Settlement Class member who timely and validly submits a Request to be Excluded from the Settlement Class and the Settlement will not be entitled to any portion of the Net Settlement Amount, will not be bound by the terms and conditions of the Settlement, and will not have any right to object, appeal, or comment thereon, except that Participating PAGA Members claim for PAGA penalties will still be released. (Settlement, § IX.C.)

16. Any Class Member who wishes to objection may do so in writing by submitting an objection to the Settlement Administrator on or before the Response Deadline. The Settlement Class member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. (Settlement, § IX.B.)

The Parties agree that because of Defendant's financial circumstances, Defendant will fund the Settlement Amount in two equal installments. The funding of the Settlement shall be made in two equal installments; the first half in the amount of \$487,500 shall be paid when the Court grants final approval of the Settlement; the second half in the amount of \$487,500 shall be paid within six months thereafter. (Settlement, § XI.B.; Huether Dec., ¶ 29.)

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.)

1 **B. This Settlement Is Fair, Reasonable, And Adequate**

2 The purpose of the preliminary evaluation of class action settlements is to determine only
3 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether
4 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*
5 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.)
6 Courts have broad powers to determine whether a proposed settlement is fair under the
7 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*
8 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several
9 relevant factors, including “the strength of the Plaintiffs’ case, the risk, expense, complexity and
10 likely duration of further litigation, the risk of maintaining class action status through trial, the
11 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
12 [and] the experience and views of counsel...” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
13 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and
14 weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91
15 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual
16 decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual
17 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
18 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
19 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
20 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
21 1011, 1027.)

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

well as class action litigation.

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

The Settlement was reached as a result of arm's-length negotiations facilitated by a highly regarded and experienced wage and hour mediator, Hon. Lisa Hart Cole (Ret.) and analysis by Plaintiffs' counsel and Plaintiffs' counsel's expert. (Huether Dec. ¶¶8-28.) While Plaintiffs believe in the merits of their case, they also recognize the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to risking an unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several more years to litigate. (*Id.*)

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

As described herein, the Parties investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed Settlement and engaged in sufficient investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the proposed Settlement was reached following probative factual evaluation of Defendant's relevant policies and procedures; review, compilation, and analysis of a 50% of the time and pay data, calculation of the total number of workweeks worked by class members, as well as information regarding number of current and former employees; number of pay periods; average rate of pay; number of pay periods, and Plaintiffs' counsel's analysis of both the aforementioned data as and Defendant's relevant policies and procedures, and Defendant's employee handbook, multiple discussions, calls, and emails with the Defendant's counsel, the disputed factual and legal issues involved in this case, the risks attending further prosecution, including risks related to a contested motion for class certification, and the substantial benefits to be received pursuant to a compromise and settlement of the case as set forth in the Agreement, settlement on the terms agreed to are in the best interest of Plaintiffs and the settlement class. (*Id.*)

The Settlement came only after the case was fully investigated by counsel, as set forth above. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view

of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

3. Plaintiffs’ counsel are experienced in similar litigation.

Experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation “is entitled to significant weight” in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

Both Plaintiffs’ and Defendant’s counsel are experienced in employment, wage and hour and class action matters. Lavi & Ebrahimian LLP, Law Offices of Sahag Majarian II, and Wilshire Law Firm are well-regarded firms that handle almost exclusively employment matters. (Huether Dec. ¶33; Marquez Dec. ¶ 28-35.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has been approved in class counsel in numerous actions and has been named a Southern California Super Lawyer the area of Plaintiff’s employment litigation - class action from 2011-2022. (*Id.*) Defendant’s counsel, of Atwood Gregg and Jackson Lewis are also extremely well-regarded and respected as employment defense counsel. Counsel on both sides share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, and the benefit the settlement confers on the class. (Huether Dec. ¶¶8-30.) Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class. (*Id.*)

4. The Settlement is fair and reasonable based on the strengths of Plaintiffs’ case and the risks and costs of further litigation

Plaintiffs and their counsel have concluded it was reasonable to enter into the proposed Settlement. Defendant has vigorously contested and continue to contest liability for the claims asserted in the action. Although Defendant believes that class certification would be unlikely on

1 such claims, they nevertheless agreed to attempt resolution of the case through extensive informal
2 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

3 There are significant legal uncertainties associated with cases such as this as they can be
4 factually complex and require protracted litigation to resolve. A settlement is not judged solely
5 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have
6 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*
7 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*
8 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and
9 necessary in the settlement process...even if the relief afforded by the proposed settlement is
10 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
11 a class settlement because the public interest may indeed be served by a voluntary settlement in
12 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at
13 250.)

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

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

20 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record
21 in all cases to contain evidence in the form of an explicit statement of the
22 maximum amount the plaintiff class could recover if it prevailed on all its
23 claims—a number which appears nowhere in the record of this case. But *Kullar*
24 does not, as Greenwell 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.”

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

26 Based on the information informally produced by Defendant in advance of the mediation,
27 during the class period, Defendant employed approximately 167 current and former non-exempt
28 employees over the course of approximately 27,508 workweeks who received an average rate of

1 pay for \$15.48/hour. Plaintiffs' expert further estimate that Class Members worked
2 approximately 163,921 shifts during the time prior to mediation. (Huether Dec. ¶11.) Based on
3 Class Counsel's and Plaintiffs' expert witness's analysis of the data, the maximum exposure for
4 Plaintiffs' claims were as follows:

5 Unpaid Wages: Plaintiffs alleged Defendant engaged in a rounding practice which operated
6 to the detriment of Plaintiffs and the Class. Plaintiffs contend that Defendants rounded each punch,
7 including the clock out and clock in from a meal period. Plaintiffs' expert analysis determined that
8 the Class was underpaid an average of 6.4 minutes per shift and that 89.9% of recorded shifts
9 evidenced rounding which favored Defendant. Therefore, Plaintiffs estimated there were
10 approximately **\$270,497.19** in damages for unpaid minimum wages [Calculated as follows: 163,921
11 shifts x .1066 hours lost due to rounding on avg. per shift x \$15.48 avg. hourly rate = \$270,497.19.]
12 (Huether Dec. ¶15.)

13 Plaintiffs also alleged that Defendant failed to properly calculate the regular rate for
14 purposes of paying overtime wages thus resulting in the underpayment of overtime wages.
15 Plaintiffs alleged that they and other class members received performance-based bonuses and shift
16 differentials, which were not considered when calculating the regular rate of pay during pay
17 periods when they received a shift differential and worked overtime. Instead, overtime was paid at
18 1.5 times the base hourly rate of pay. Based on the data analyzed, Plaintiffs estimated there were
19 approximately **\$138,093** in damages for unpaid overtime and double overtime wages based on
20 regular rate issues, which was calculated after analyzing approximately \$1,521,044.84 in bonuses
21 and shift differentials paid to the class members during pay periods that included overtime or double
22 overtime hours earned (for a total of approximately 290,440 hours of overtime and 2,757 hours of
23 double overtime). (Huether Dec. ¶16.)

24 Meal Breaks: Plaintiffs first alleged that Defendant failed to accurately records meal
25 periods, which it contended was compliant because it maintained on duty meal period agreements
26 for class members. Plaintiffs further alleged that they and other class members regularly took late,
27 short, or interrupted meal periods as a result of Defendant's chronic understaffing. Plaintiffs'
28 expert's analysis of the time records showed that approximately 73.8% of eligible shifts failed to

evidence a recorded meal period. Further, Plaintiffs' expert discovered that 49.2% of record first meal periods were taken late and 46.8% of recorded meal periods were less than 30 minutes. Therefore, Plaintiffs estimated there was a maximum of approximately **\$1,872,672.85** in damages for meal break violations, assuming there was a violation every shift. [Calculated as follows: 163,921 shifts x \$15.48 avg. hourly rate x 73.8% violation rate = \$1,872,672.85]. (Huether Dec. ¶17.)

Rest Breaks: Plaintiffs first alleged that Defendant failed to provide timely rest periods. Plaintiffs further alleged that they and other class members regularly took late, short, or interrupted rest periods as a result of Defendant's chronic understaffing. Unlike many employers, Defendant here required Plaintiffs and other class members to clock in and clock out for their rest periods. Plaintiffs' expert's analysis of the time records showed that only 50% of eligible shifts evidenced at least 1 rest period. In those shifts that did evidence a rest period, approximately 39% of them were less than 10 minutes. Further, Plaintiffs alleged that they were required to remain on premises for rest periods rendering every rest period non-compliant as class members remained under the control of Defendant. Therefore, Plaintiffs estimated there was a maximum of approximately **\$2,537,497.08** in damages for meal break violations, assuming there was a violation every shift. [Calculated as follows: 163,921 shifts x \$15.48 avg. hourly rate x 100% violation rate = \$2,537,497.08]. (Huether Dec. ¶18.)

With regard to Plaintiffs' Timely Wages Claim, based on the underlying unpaid wages and meal and rest period claims, Plaintiffs allege that Defendant failed to timely pay wages during employment. The realistic amount that Plaintiffs could recover amounted to approximately **\$33,400**. [167 employees x \$200 penalty = \$33,400.] (Huether Dec. ¶19.)

With regard to Plaintiffs' Wage Statement claim, the maximum that Plaintiffs could recover amounted to approximately **\$668,000.00**. [167 employees X \$4,000 maximum penalty = \$668,000.00.] (Huether Dec. ¶20.)

Plaintiffs also alleged that Defendant failed to produce requested employment records when requested. Specifically, Plaintiff Enriquez requested his personnel file on multiple occasions and did not receive it. Assuming 20% of the class requested their personnel file and did not

1 receive it in the time prescribed by Labor Code 226(c) or 1198.5, the maximum Plaintiffs could
2 recover is approximately **\$25,500.00**. [34 employees X \$750 penalty = \$25,500.00.] (Huether
3 Dec. ¶21.)

4 With regard to Plaintiffs' Waiting Time penalties claim, the maximum that Plaintiff could
5 recover amounted to approximately **\$126,316.80**. [34 former employees X 8 hours per workday X
6 \$15.48/hour average rate of pay X 30 days = \$126,316.80.] (Huether Dec. ¶22.)

7 As such, Plaintiffs' maximum potential recovery in this matter, excluding PAGA
8 penalties, would amount to approximately \$5,671,976.92. The settlement reached in this matter
9 was \$975,000 or approximately 17.2% of exposure. (Huether Dec. ¶23.)

10 As for Plaintiffs' PAGA claim, according to the data informally produced by Defendants in
11 this case, during the relevant PAGA period (from January 22, 2020 through mediation) there are
12 approximately 5,183 pay periods for approximately 140 aggrieved employees. (Huether Dec. ¶23.)

13 Regarding the PAGA penalty exposure analysis, as an initial matter, in wage and hour
14 class action cases that settle, which are the overwhelming majority of such cases, very little of the
15 total settlement is paid to PAGA penalties in order to maximize payments to class members. *See*,
16 *e.g.*, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve
17 class action settlement allocating \$0 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S.
18 Dist. LEXIS 5118, 2015 WL 222500, at *2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving
19 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000), report and
20 recommendation adopted, 2015 U.S. Dist. LEXIS 25730, 2015 WL 925598 (E.D. Cal. Mar. 3,
21 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (preliminarily
22 approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000); *Franco v.*
23 *Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27,
24 2012) (granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
25 \$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575,
26 at *3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total
27 settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S. Dist. LEXIS 15821,
28 2011 WL 672645, at *1 al. Feb. 16, 2011) (granting final approval of \$10,000 in PAGA penalties

1 out of a total settlement amount of \$6,900,000). In these settlements, the parties generally maximize
2 statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S. Dist. LEXIS
3 169057, 2012 WL 5941801, at *2, *14 (approving a \$10,000 PAGA award out of a total settlement
4 amount of \$2,500,000). (Huether Dec. ¶25.)

5 Plaintiffs recognize that PAGA claims generally settle for a mere fraction of multiple
6 “stacked” PAGA penalties as is described above, but more typically resolve for a reasonable
7 fraction of the unstacked PAGA exposure. Here, since the claims for minimum wages, overtime
8 wages, meal periods, rest periods, timely wages due, wage statements, and waiting time penalties
9 are all premised at least partially on the same factual basis (i.e., that Defendant’s rounded Plaintiffs’
10 and other class members time punches and failed to provide meal and rest periods due to
11 understaffing) stacking these penalties could arguably be overly punitive. Instead, seeking only
12 penalties for minimum wages results in far more reasonable and less punitive penalties that
13 eliminate the “stacked” penalties for each Labor Code section violated as a result of the same
14 conduct. As a result, Defendant could argue Plaintiffs and the aggrieved employees may only be
15 able to recover penalties under minimum wage claim. Thus, if that interpretation of the “stacking”
16 issue is correct and accepted, the maximum theoretical penalties would be substantially less under
17 what Plaintiffs anticipate could be Defendant’s view of the law. And if the Court decided that this
18 theory is correct about the initial/subsequent violation rate issue, the maximum theoretical exposure
19 would be further reduced by about half. (Huether Dec. ¶26.)

20 Second, Plaintiffs’ calculation also assumes that Plaintiffs’ PAGA claims could be tried in a
21 manageable manner that comports with due process, which Plaintiffs anticipate Defendant could
22 vigorously dispute. (Huether Dec. ¶27.)

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

25 Fourth, Defendant could argue that PAGA penalties would be limited in any event. As
26 discussed in detail above, Defendant denies any liability. Moreover, Defendant could likely argue
27 that even if Plaintiffs prevailed, the recoverable penalties under PAGA are minimal. Indeed,
28 courts to consider the issue have refused to “stack” PAGA penalties. *See Carrington v. Starbucks*

1 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving
2 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27
3 Cal.App.5th 809. Additionally, Defendant could argue that Plaintiffs are not entitled to recover
4 PAGA penalties at the subsequent violation rate of \$200 per pay period. California’s appellate
5 courts have held that “[u]ntil the employer has been notified that it is violating a Labor Code
6 provision (whether or not the commissioner or court chooses to impose penalties), the employer
7 cannot be presumed to be aware [of the violation]” and therefore, until a Court or the
8 Commissioner issues a finding of a violation, the initial \$100 violation rate applies for each pay
9 period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163
10 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
11 *Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 (“[u]nder California law, courts
12 have held that employers are not subject to heightened penalties for subsequent violations unless
13 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”).
14 Thus, Plaintiffs anticipate Defendant could argue that even if the Plaintiffs were able to establish
15 any violation of the Labor Code, the PAGA penalties assessed for these violations will be
16 computed at the \$100 rate, as opposed to the \$100 per pay period rate at maximum, and there is a
17 likelihood that a further reduction of the penalty to \$5 per pay period as approved in *Carrington*.
18 (Huether Dec., ¶29.)

19 Finally, Plaintiffs anticipate that Defendant could argue that, using the most recent court of
20 appeal decision on the topic of evaluating the value of a PAGA claim, it is likely Defendants’
21 maximum exposure is actually only \$518,300 (\$100.00 per pay period X 5,183 pay periods at
22 issue). Defendant likely could have argued that this Court would use the recent case decisions and
23 this valuation as a ceiling for assessing PAGA penalties and that this amount (i.e., \$518,300. was
24 its true “worst case scenario” exposure). (Huether Dec., ¶30.)

25 In sum, the settlement in the instant case provides for a gross fund value of \$975,000 with a
26 PAGA allocation of \$50,000 with 75% (\$37,500) payable to the LWDA and 25% (\$12,500)
27 distributed the PAGA Employees and falls squarely within the range of reasonableness for PAGA
28 allocations outlined in the case law above. (Huether Dec., ¶31.)

1 Defendant's defenses to Plaintiffs' claims were as follows: Defendant contends that with
2 respect to Class Members minimum and overtime wages claims, Defendant paid all wages which
3 were due and owing and maintained compliant policies. Defendant contended that their rounding
4 policy and practice was fair and neutral and operated to the benefit of the employees. Further,
5 Defendant argued that there was no evidence that their rounding policy was anything but neutral
6 and therefore Plaintiffs would not be able to certify their claim or prove damages. To the extent
7 Defendant's rounding practice was not neutral, any unpaid time wage *de minimis*. With respect to
8 Plaintiffs' meal period claim, Defendant argued that it maintained compliant meal period policies
9 and to the extent an employee failed to take a compliant meal period it was their decision.
10 Defendant also would contend that it properly maintained on duty meal period agreements. Finally,
11 Defendant contended it was not understaffed and Plaintiffs and the class were afforded the
12 opportunity to take compliant meal periods. With regard to Plaintiffs' rest period claim, Defendant's
13 argued that Plaintiffs and class members recorded their rest breaks therefore the time records would
14 speak for themselves. Defendant contended that it properly provided rest periods to all employees
15 and to the extent a class member did not take a rest period, it was their decisions and Defendant
16 does not have a duty to monitor class members' rest periods. Finally, Defendant contends that class
17 members were free to leave the premises for rest periods and chose not to do so. Defendant also
18 alleged it timely paid all wages owed and provided accurate wage statements. Additionally,
19 Defendant reasoned as far as Plaintiffs' derivative claims were concerned, Plaintiffs could not
20 recover wage statement and waiting time penalties for alleged failures. Defendant argued that in
21 order to succeed on the derivative claims, Plaintiffs would have to certify and prove damages on the
22 underlying claims which Defendant contend would be very difficult. Based on the foregoing,
23 Defendant concluded, this case would not be amenable to class certification. For these reasons,
24 Defendant concluded, Plaintiffs would not likely prevail on their claims. (Huether Dec. ¶31.)

25 If the Plaintiffs continued litigating this matter, the class members could potentially receive
26 **nothing** if the court agreed with what Plaintiffs anticipate Defendant's position to be or if
27 Defendant was able to defeat certification based on the individual inquiries that would be required
28 regarding Plaintiffs' unpaid wages claims and meal and rest break claims. Furthermore, even if the

1 Court agreed with Plaintiffs, Plaintiffs still had to prove Defendants faced exposure under Plaintiff's
2 derivative claims and acted intentionally and *willfully* in order to receive the additional penalties
3 under Labor Code Sections 203. As such, Plaintiffs' decision to settle this matter was in the best
4 interest of the Class Members.

5 This is a fair and reasonable result. Other substantial benefits also include that it is a non-
6 reversionary, non-claims made settlement, which distributes the Net Settlement Amount on a pro
7 rata basis based on the number of Eligible Workweeks each Class Member worked for Defendant
8 during the Settlement Period. The 25% portion of the PAGA Settlement allocated to Participating
9 PAGA Members will be distributed to each Participating PAGA Member who worked during the
10 PAGA Period based on their Workweeks during the PAGA Period. (Settlement, § X). Class
11 Members and Participating PAGA Members will have one hundred eighty (180) calendar days from
12 the date of issuance of the check to cash or otherwise deposit their check. For any check not cashed
13 after 180 calendar days, they shall be provided to the California Unclaimed Property Fund.
14 (Settlement, § XI.C.). (Huether Dec. ¶28.)

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

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

27 ///

28 ///

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiffs’ class for settlement purposes only.

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

- Numerosity: The settlement class consists of at least 167 Settlement Class Members. Thus, the requirement of numerosity is easily met because joinder of at least 167 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.

- Typicality: The claims of the class representative are typical of the claims of the class members as a whole. The named Plaintiffs suffered the same alleged violations (e.g. failure to pay minimum and overtime wages, failure to pay meal and rest periods and associated premium wages for non-compliant meal and rest periods, failure to pay timely wages during employment, failure to provide complete and accurate wage statements, failure to provide requested records, and failure to pay all wages due upon separation of employment) as the class as a whole did and, thus, the claims of the named Plaintiffs fairly represents the claims of the class as a whole.

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

- Adequacy: Plaintiffs have proven to be adequate class representatives. They have conducted themselves diligently and responsibly in representing the class in this litigation, they understand their fiduciary obligations, and they have actively participated in the prosecution of this case. (Huether Dec. ¶35; Marquez Dec. ¶ 18.) Plaintiff Mejia has spent hours in meetings and

1 conferences with counsel to get a better understanding of his work environment and requirements.
2 Plaintiffs continue to be actively engaged in the ongoing settlement negotiations following
3 mediation that were ultimately required to finalize settlement. (*Id.*) Further, Plaintiffs do not have
4 any interest that is adverse to the interests of the other class members. (*Id.*) Moreover, proposed
5 class counsel is adequate to represent the class for settlement purposes and has been appointed as
6 class counsel before by this Court as well as both State and Federal Courts. (Huether Dec., ¶31; See
7 generally, Declaration of Saul Hernandez Mejia.)

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

- 10 1) Whether Defendant failed to pay minimum and overtime wages;
- 11 2) Whether Defendant failed to provide the Class Members meal and rest
12 periods and premium wages for missed meal and rest periods;
- 13 3) Whether Defendant failed to produce requested employment records;
- 14 4) Whether Defendant failed to provide the Class Members complete and
15 accurate wage statements;
- 16 5) Whether Class Members are entitled to waiting time penalties for
17 Defendant's failure to pay all wages upon separation of employment; and
- 18 6) Whether Defendant violated Business and Professions Code section 17200.

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

24 **VI. THE PROPOSED NOTICE OF SETTLEMENT SHOULD BE APPROVED**

25 The proposed Notice in the form attached to the Settlement as Exhibit A, should be
26 approved for dissemination to the Class Members. This document informs the Class of the terms of
27 the Settlement, of their right to receive their proportional share of the Settlement and the manner in
28 which to do so, of their right to request exclusion or to comment upon or object to the Settlement,
and of their right to appear in person or by counsel at the final approval hearing and to be heard
regarding approval of the Settlement. Adequate periods of time are provided by each of these

1 procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the
2 Notice will identify the information upon which the Settlement Class Member's share will be
3 calculated as well as the estimated amount he or she can expect to receive if he or she chooses to
4 participate in the settlement.

5 **VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE**

6 Plaintiffs' Counsel seeks attorneys' fees and costs award of one-third (1/3) of the Settlement
7 Amount or Three Hundred Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00) and Class
8 Counsel's costs not to exceed Thirty-Five Thousand Dollars (\$35,000), for the time spent litigating
9 this matter as well as expenses incurred in the prosecution of the action thus far. Defendant will
10 not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well
11 within the historical range of attorneys' fee awards under the common fund theory, which is
12 generally from 20% to 50%. The requested fee is a fair compensation for undertaking complex,
13 risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the
14 substantial benefits achieved by Plaintiffs' counsel for the Class Members. Plaintiffs' counsel
15 diligently litigated and investigated this case.

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

1 which others derive benefits may require those passive beneficiaries to bear a fair share of the
2 litigation costs.” (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California
3 Supreme Court recognized that the common fund doctrine has been applied “consistently in
4 California when an action brought by one party creates a fund in which other persons are entitled to
5 share.” (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

6 Several courts have expressed frustration with the alternative “lodestar” approach for
7 deciding fee awards, which usually involves wading through voluminous and often indecipherable
8 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.
9 Cal 1989)] 723 F. Supp. 1373, 1375[.]) The percentage approach is preferable to the lodestar
10 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages
11 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;
12 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at
13 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to
14 determine the award of attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*
15 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33%].)

16 Plaintiffs’ counsel’s request for fees equal to 1/3 [33.33%] of the Settlement Amount is
17 within the range of reasonableness. Historically, courts have awarded percentage fees in the range
18 of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig., supra*,
19 723 F. Supp. at 1378.) According to Professor Newberg: “No general rule can be articulated on
20 what is a reasonable percentage of a common fund...Usually 50 per cent of the fund is the upper
21 limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a
22 disproportionate part of the recovery obtained for the class, though somewhat larger percentages
23 are not unprecedented.” (Newberg, *supra*, §14.6.)

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

28 ///

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

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

13 **VIII. THE REQUESTED ENHANCEMENT PAYMENTS ARE REASONABLE**

14 The named Plaintiffs are entitled to an enhancement payments for their service as class
15 representatives and the risks associated with their role as Class Representatives and named
16 Plaintiffs in this action. Plaintiffs understood and continue to understand their role as Class
17 Representatives, they have protected the interests of Class Members during the pending of this
18 matter and will continue to do so. (Huether Dec. ¶38; Marquez Dec., ¶ 18; *See generally*
19 Declaration of Saul Hernandez Mejia.) Plaintiff Mejia has spent hours in meetings and
20 conferences with counsel to get a better understanding of his work environment. (*Id.*) Even after
21 mediation, each Plaintiff continued to be engaged with counsel for the months of the continued
22 negotiations that it took to ultimately finalize a settlement as well as understanding and discussing
23 the settlement agreement with their attorneys. (*Id.*) Further, Plaintiffs do not have any interest that
24 is adverse to the interests of the other class members. (*Id.*) Defendant will not oppose the
25 application for an enhancement of \$10,000.00 to each Plaintiff as the Class Representatives from
26 the Settlement Amount for their services to the Class in this action. Class Counsel can attest that
27 Plaintiffs devoted a proportionate amount of time and work assisting counsel in the case,
28 communicating with counsel frequently, providing documents and information regarding their

1 employer and employment, which led to increase in the value and ultimate success of the
2 Settlement. (*Id.*)

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

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

- 5 1. Within thirty (30) calendar days of the Court's entry of an order granting
6 preliminary approval, Defendant will provide to the Settlement Administrator
7 the following information about each Settlement Class member ("Class List"):
8 (1) name; (2) last known home address; (3) number of workweeks as a class
9 member during the Settlement Period or the dates of employment for each
10 Settlement Class member and any such other information as may be necessary to
11 calculate each Settlement Class Member's payments; and (4) Social Security
12 number ("Class List"). (Settlement, § IX.A.)
- 13 2. Within than ten (10) calendar days after receiving the Class List from
14 Defendant, the Settlement Administrator shall mail copies of the Notice to all
15 Settlement Class Members by regular First-Class U.S. Mail. (Settlement, §
16 IX.A.)
- 17 3. Class Members shall have forty-five (45) calendar days from the date of the
18 postmark on the Class Notice to return to the Settlement Administrator an
19 objection, dispute to Eligible Workweeks, or Request to be Excluded
20 ("Response Deadline"). With respect to any Notice that is re-mailed, the
21 Response Deadline for the Class Member whose Notice is re-mailed will be
22 extended an additional fifteen (15) calendar days. (Settlement, § IX.A.)
- 23 4. The filing date for the Motion for Final Approval of the Class Action
24 Settlement, and Motion for Final Approval of Plaintiffs' Attorneys' Fees and
25 Litigation Costs and Enhancement Payments to the Class Representatives will
26 be determined by the Court.
- 27 5. The Final Fairness and Approval Hearing date will be determined by Court. The
28 parties request that the Final Fairness and Approval Hearing be set approximately
one hundred twenty (120) days following the Court's granting of preliminary
approval of the proposed Class Action Settlement.

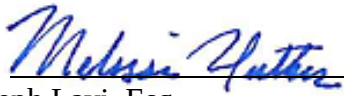
23 **X. CONCLUSION**

24 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and
25 immediate payment to Class Members; it is non-collusive; and it was achieved as the result of
26 informed, extensive, and arms' length negotiations conducted by counsel for respective parties who
27 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties
28

1 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the
2 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement and set a
3 date for a final approval hearing.

4
5 Dated: December 5, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
LAW OFFICES OF SAHAG MAJARIAN II
WILSHIRE LAW FIRM

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7
8 By:  _____
9 Joseph Lavi, Esq.
10 Melissa A. Huether, Esq.
11 Justin F. Marquez, Esq.
12 Benjamin H. Haber, Esq.
13 *Attorneys for Plaintiffs Saul Hernandez Mejia and*
14 *Manuel Enriquez and Other Class Members*
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