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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JED ASIS and JUSTIN WATSON

Plaintiff,

vs.

FOOT LOCKER RETAIL, INC., and DOES
1 through 50, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0000627

(Assigned to the Hon. George J. Abdallah, Dept.
10A)

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

Date: October 3, 4, 5, 10, or 11, 2023
Time: 9:00 a.m.
Dept.: 10A

Complaint Filed: January 26, 2023
FAC Filed: July 25, 2023
Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 3, 4, 5, 10, or 11, 2023, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable George J. Abdallah, judge presiding, in Department 10A of the above referenced Court located at 180 E. Weber Avenue, Stockton, California 95202, Plaintiffs Jed Asis, Kevin Johnson, and Justin Watson (collectively, “Plaintiffs”) will seek an Order:

(1) preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and Release (“Agreement” or “Settlement Agreement”) in this matter;

(2) conditionally certifying the following class for settlement purposes only: all current and former non-exempt employees of Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time during the Class Period (“Class” or “Class Members”);

(3) appointing Plaintiffs as Class Representatives and Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, and Max W. Gavron of Diversity Law Group, P.C., Emil Davtyan of Davtyan Law Firm, Inc., and David J. Lee of David Lee Law, APC as Class Counsel;

(4) preliminarily approving the settlement and the Gross Settlement Amount of \$8,970,000.00;

(5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA Penalties, Incentive Payment to Plaintiffs, Class Counsel Award of attorneys’ fees and costs, Settlement Administration Costs, and the allocation of payments to Participating Class Members, that could ultimately be given final approval by this Court;

(6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to Class Members, which is attached as an exhibit to the Settlement Agreement;

(7) approving the distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Settlement Agreement;

(8) appointing Phoenix Settlement Administrators as the settlement administrator; and

(9) setting the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which

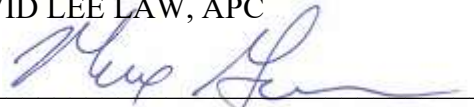
1 provides for court approval of the settlement of a purported class action and allows the Court to
2 preliminarily certify a class for settlement purposes.

3 The basis for this Motion, filed without any opposition from Defendant Foot Locker
4 Retail, Inc. (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and
5 the procedures proposed by the parties are adequate to ensure the opportunity of class members
6 to participate in, opt-out of, or object to the settlement.

7 This Motion will be based on the attached Memorandum of Points and Authorities, the
8 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Larry W.
9 Lee, Kristen M. Agnew, Nicholas Rosenthal, Max W. Gavron, Emil Davtyan, David J. Lee,
10 Plaintiff Jed Asis, Plaintiff Justin Watson, and Plaintiff Kevin Johnson, and upon the oral
11 arguments of counsel (should there be any) and on the complete records and file herein.

12
13 Dated: September 1, 2023

DIVERSITY LAW GROUP, P.C.
DAVTYAN LAW FIRM, INC.
DAVID LEE LAW, APC

14
15 By: 

16 Larry W. Lee

17 Max W. Gavron

18 Emil Davtyan

19 David J. Lee

20 Attorneys for Plaintiffs JED ASIS, KEVIN
21 JOHNSON, and JUSTIN WATSON
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1 **I. INTRODUCTION**

2 Plaintiffs Jed Asis, Kevin Johnson, and Justin Watson (collectively, “Plaintiffs”) seek
3 preliminary approval of a \$8,970,000 proposed class action settlement with Defendant Foot
4 Locker Retail, Inc. (“Defendant”). The Parties submit their Joint Stipulation of Class Action and
5 PAGA Settlement and Release (“Agreement,” “Settlement Agreement,” or “SA”) in conjunction
6 with this Motion. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 17, Ex. A.

7 Prior to the settlement of this action, Plaintiffs and Defendant (the “Parties”) litigated and
8 exchanged information through formal and informal discovery. With the assistance of
9 experienced mediator, Mark Rudy, Esq., the Parties reached the current settlement. The terms of
10 the settlement provide that Defendant shall pay a Gross Settlement Amount of Eight Million
11 Nine Hundred Seventy Thousand Dollars (\$8,970,000.00). **Significantly, the entire settlement**
12 **amount is non-reversionary, such that no monies will revert to Defendant.** Further, the Class
13 Members will not need to do anything to participate in the settlement.

14 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
15 risks and uncertainty of class certification and the merits of this case. Therefore, the Parties
16 respectfully request that the Court grant this Motion for Preliminary Approval of Class and
17 Representative Action Settlement.

18 **II. BACKGROUND OF THE SETTLEMENT**

19 **A. The *Johnson* Action**

20 On January 13, 2021, Plaintiff Kevin Johnson (“Johnson”) filed a letter with the
21 California Labor and Workforce Development Agency (“LWDA”) alleging claims against
22 Defendant for violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558,
23 and 1194. Gavron Decl. ¶ 3. On January 19, 2021, Johnson commenced a putative class action
24 against Defendant entitled *Kevin Johnson v. Foot Locker Retail, Inc.*, Superior Court of the State
25 of California, County of San Francisco, Case No. CGC-21-589180. The action was subsequently
26 amended and removed to the United States District Court, Northern District of California (the
27 “*Johnson* Action”). *Id.* ¶ 4. The *Johnson* third amended complaint alleges claims for: (1)
28 violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code §§ 510 and 1194; (3)

violation of Labor Code §§ 201-204; (4) violation of Labor Code § 226(a); (5) violation of Business and Professions Code § 17200, *et seq.*; and (6) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). *Id.*

B. The *Johnson* Mediation

On November 29, 2022, the parties in the *Johnson* Action participated in mediation with neutral Mark Rudy, Esq., a respected mediator of complex wage and hour actions. After thorough and continued settlement negotiations with the assistance of Mr. Rudy, the *Johnson* parties accepted a mediator’s proposal to settle Johnson’s class and PAGA claims. Gavron Decl. ¶ 15.

C. The *Asis* Action

On January 26, 2023, Asis and Watson commenced a putative class action against Defendant entitled *Jed Asis and Justin Watson v. Foot Locker Retail, Inc.*, Superior Court of the State of California, County of San Joaquin, Case No. STK-CV-UOE-2023-0000627. *Id.* ¶ 6. The initial complaint alleges claims for: (1) violation of Labor Code §§ 510 and 1194; (2) violation of Labor Code § 226.7; (3) violation of Labor Code § 226; (4) violation of Labor Code §§ 201-203; (5) violation of Labor Code § 2802; and (6) violation of Business and Professions Code § 17200, *et seq.* The action was subsequently removed to the United States District Court, Eastern District of California (the “*Asis* Action”). *Id.* On March 3, 2023, Plaintiffs Jed Asis (“Asis”) and Justin Watson (“Watson”) filed a letter with the LWDA alleging claims against Defendant for violations of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 1194, and 2802. Gavron Decl. ¶ 5.

D. Consolidated Claims

In or about February 2023, the plaintiffs in the *Johnson* and *Asis* Actions became aware of their potentially related matters. After meeting and conferring with the parties in both actions and engaging in further negotiations, Plaintiffs and Defendant agreed to a global settlement of claims. Gavron Decl. ¶ 7. The Parties further agreed to stay the *Johnson* Action pending completion of the global settlement. On May 2, 2023, the parties in the *Johnson* Action filed a Stipulation to Stay Action Pending Settlement Approval in Related Action. On May 3, 2023,

1 the Court stayed the *Johnson* Action. *Id.* ¶ 9. On May 12, 2023, the *Asis* Action was remanded
2 to the Superior Court of the State of California, County of San Joaquin for further proceedings
3 (the “Action”). *Id.* ¶ 10.

4 As a condition of the global settlement, the Parties have agreed to consolidate the
5 claims in the *Johnson* and *Asis* Actions. *Id.* ¶ 11. On July 25, 2023, Plaintiffs filed the First
6 Amended Complaint, which is the operative complaint in the Action (“Operative Complaint”
7 or “Complaint”). The Operative Complaint alleges claims for: (1) violation of Labor Code §§
8 510 and 1194; (2) violation of Labor Code §§ 226.7 and 512; (3) violation of Labor Code § 226;
9 (4) violation of Labor Code §§ 201-203, 204, and 246; (5) violation of Labor Code § 2802; (6)
10 violation of Business and Professions Code § 17200, *et seq.*; and (7) violation of Labor Code §
11 2698, *et seq.* *Id.* ¶ 12. Specifically, the Operative Complaint alleges that Defendant failed to pay
12 overtime wages for all hours worked and at the correct rate of pay for off-the-clock work,
13 including but not limited to time spent undergoing COVID screenings, temperature checks, and
14 answering work-related trivia questions; failed to provide timely and full-length meal and rest
15 breaks to employees; failed to pay meal and rest period premiums at the regular rate of pay when
16 employees also earned non-discretionary pay during the same pay period; failed to provide accurate
17 itemized wage statements; failed to pay all wages owed upon separation of employment, including
18 sick pay wages, overtime wages, and meal and rest period compensation; failed to reimburse
19 employees for work-related expenses; and engaged in unfair business practices. Plaintiffs also
20 seek penalties pursuant to the PAGA premised on the same Labor Code violations. *Id.* ¶ 12.

21 **E. Summary of Discovery and Investigation**

22 The Parties spent significant time and effort exchanging discovery and information in this
23 Action. Prior to agreeing to the *Johnson* mediation, the *Johnson* parties exchanged written
24 discovery, engaged in meet and confer efforts, and motion practice. Gavron Decl. ¶ 13.
25 Defendant produced hundreds of pages of documents, including employee handbooks, payroll
26 policies, meal and rest break documents, and a sampling of employee clock-in and clock-out
27 records and corresponding payroll records. Defendant also produced information concerning the
28 number of current and former employees and the average rate of pay for putative class members.

1 *Id.* ¶ 13. At the district court in the *Johnson* Action, the Parties also engaged in motion practice
2 and litigation concerning the scope of Plaintiff’s claims and Plaintiff ultimately defeated
3 Defendant’s Motion for Partial Judgment on the Pleadings. Gavron Decl. ¶ 13.

4 Plaintiffs’ Counsel spent significant time and effort examining the documents produced
5 by Defendant throughout the litigation. *Id.* ¶ 14. Plaintiffs’ Counsel prepared a comprehensive
6 mediation brief that outlined the factual and legal issues relevant to the litigation, contained a
7 detailed synthesis of Defendant’s timekeeping and payroll records, and presented a complete
8 damages analysis of Defendant’s potential liability. With the assistance of Mr. Rudy, the Parties
9 were able to reach an agreement to resolve all of the related actions in this case, which is
10 memorialized in the Joint Stipulation of Class Action and PAGA Settlement and Release. *Id.* ¶
11 14.

12 **III. THE PROPOSED TERMS OF THE SETTLEMENT**

13 **A. Class Definition**

14 The proposed Class consists of “all current and former non-exempt employees of
15 Defendant Foot Locker Retail, Inc. who were employed in the State of California at any time
16 during the Class Period.” *See* SA § B-2. The Class Period is the time period commencing on
17 October 19, 2018, and ending February 27, 2023. SA § B-7.

18 Some Class Members may also be PAGA Members. *See* SA § B-22. PAGA Members
19 consist of “all current and former non-exempt employees of Defendant Foot Locker Retail, Inc.
20 who were employed in the State of California at any time during the PAGA Period.” *See id.*
21 The PAGA Period is the time period commencing on July 19, 2019, and ending February 27,
22 2023. *Id.* § B-24. The Parties estimate there are approximately 12,500 Class Members. Gavron
23 Decl. ¶ 20.

24 **B. Gross Settlement Amount**

25 The settlement provides for the Gross Settlement Amount of Eight Million Nine
26 Hundred Seventy Thousand Dollars (\$8,970,000.00). *See* SA § B-15. The settlement allocates
27 Five Hundred Thousand Dollars (\$500,000.00) of the Gross Settlement Amount to PAGA
28 Penalties. *See* SA §§ B-23, C-7. Pursuant to the PAGA, 75% of the PAGA Penalties, *i.e.*, the

1 sum of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00), shall be paid to the
2 California Labor and Workforce Development Agency (“LWDA”). *See id.* § B-23. The
3 remaining 25% of the PAGA Penalties, *i.e.*, the sum of One Hundred Twenty-Five Thousand
4 Dollars (\$125,000.00), shall be distributed to PAGA Members. *See id.* The Gross Settlement
5 Amount was calculated with, and is premised on, Defendant’s representation that Class
6 Members worked approximately 600,000 workweeks during the Class Period. *See SA* § C-10.
7 If the actual number of workweeks worked by the Class Members exceed 600,000 by more
8 than ten percent (10%) (*i.e.*, more than 60,000), the Gross Settlement Amount will increase by
9 1% for every 1% increase in workweeks over the 10% threshold. *Id.*

10 **C. Individual Settlement and PAGA Payments**

11 The balance of the Gross Settlement Amount remaining after deduction of the approved
12 Incentive Payment to Plaintiffs, Settlement Administration Costs, PAGA Penalties, and Class
13 Counsel Award (“Net Settlement Amount”), will be available for distribution to Participating
14 Class Members (*i.e.*, Class Members who do not opt-out). *See SA* § B-20. The amount
15 allocated to each Class Member will be based on the number of workweeks worked by Class
16 Members during the Class Period, less any required legal deductions. *See id.* § C-9. Class
17 Members do not need to do anything should they wish to receive their share of the settlement
18 funds.¹ *See id.* §§ C-2, C-9.

19 Based on the size of the Class and the Gross Settlement Amount, Class Members will
20 be entitled to recover, on average, up to \$416.04 each, after deductions for the Incentive
21 Payment to Plaintiffs, Settlement Administration Costs, PAGA Penalties, and Class Counsel
22 Award. Gavron Decl. ¶ 29. The amount any particular Class Member will receive may be
23 greater or lower than this average depending on the number of workweeks he or she worked,
24 with some entitled to receive more, and others less. *Id.* ¶ 29. This is fair, as it directly allocates

26 ¹ This substantially decreases the amount of burden each Class Member must bear in order to
27 receive his/her settlement share. If a Class Member does not wish to take part in this settlement
28 and be bound by the release of class claims, he/she must submit a Request for Exclusion. Such
obligations are thoroughly identified in the Class Notice. *See SA*, Ex. A.

greater recovery to individual Class Members who have allegedly suffered greater harm. *Id.*

In addition to the Individual Settlement Payments, PAGA Members are also entitled to receive \$125,000.00, or twenty-five percent (25%) of the PAGA Penalties (\$500,000.00). SA §§ B-17, C-7, C-8. As detailed in the Settlement Agreement, the amount of the Individual PAGA Payment to each PAGA Member will be based upon the number of workweeks worked by PAGA Members during the PAGA Period. SA § C-8.

The Settlement Agreement provides that all Individual Settlement Payments shall be allocated as twenty percent (20%) to W-2 wages and eighty percent (80%) to penalties and interest. SA § C-26. All Individual PAGA Payments shall be allocated 100% as penalties. *Id.* § C-27.

D. The Settlement is Non-Reversionary

This is a non-reversionary settlement, as the entirety of the settlement amount will be distributed. *See* SA §§ C-2, C-8, C-9. Participating Class Members and PAGA Members will have 180 days from the mailing of the settlement payment to cash their checks. *See id.* § C-24. After the expiration of 180 days, the funds represented by uncashed settlement checks will be remitted to the designated cy pres recipient, Legal Aid at Work, pursuant to Code of Civil Procedure § 384. *Id.* Class Counsel does not have any conflicts of interest with the proposed recipient. Gavron Decl. ¶ 63; L. Lee Decl. ¶ 9; Agnew Decl. ¶ 11; Rosenthal Decl. ¶ 5; Davtayan Decl. ¶ 9; D. Lee Decl. ¶ 3.

E. Attorneys' Fees and Reimbursement for Litigation Costs

As part of the settlement, Defendant does not object to Plaintiffs' Counsel's request for attorney's fees up to thirty-five percent (35%) of the Gross Settlement Amount (\$8,970,000.00), *i.e.*, the sum of Three Million One Hundred Thirty-Nine Thousand Five Hundred Dollars (\$3,139,500.00), plus up to Thirty-Five Thousand Dollars (\$35,000.00) for reimbursement of litigation costs, subject to the Court finally approving this Settlement. *See* SA §§ B-4, C-4.

F. Incentive Payment to Plaintiffs

As part of the settlement, Defendant does not object to Plaintiffs' request for an

Incentive Payment of Ten Thousand Dollars (\$10,000.00) to each Plaintiff in exchange for a general release and waiver of Civil Code § 1542. *See* SA §§ B-16, C-5. Both Plaintiffs and Class Counsel expressly acknowledge that the Court has final discretion in any fee award or Class Representative Incentive Payment. *See* SA §§ C-4, C-5.

G. Settlement Administration Costs

Finally, the settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. The Parties have received a quote from Phoenix Settlement Administrators for a fee not to exceed Sixty-Five Thousand Dollars (\$65,000.00). *See* SA §§ B-32, B-33. Any portion of the Settlement Administration Costs not used or approved by the Court shall be added to the Net Settlement Amount. *Id.*

H. Scope of the Class Members' Release

The scope of the release, as listed below, is identified in the Settlement Agreement at Section D, as well as in the Class Notice that will be sent to Class Members:

all claims, causes of action, demands, damages, or liabilities arising at any time during the Class Period that were pled or which could have been pled based on the factual allegations contained in the operative Complaints in the Actions or any amendments thereto, including but not limited to claims for: (i) violation of Labor Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 510 and 1194; (iii) violation of Labor Code §§ 201, 202, 203, 204, and 246; (iv) violation of Labor Code § 226; (v) violation of Labor Code § 2802; and (vi) violation of Business & Professions Code §§ 17200, which are premised on the violations described above.

SA §§ B-28, D-2.

Additionally, PAGA Members will release:

all claims, causes of action, demands, damages, or liabilities arising at any time during the PAGA Period that were pled or which could have been pled based on the factual allegations contained in the operative Complaints in the Actions or any amendments thereto, for civil penalties under the PAGA including claims premised on alleged violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, and 2802.

SA §§ B-25, D-3. The scope of the release is narrow and is limited to the claims asserted in the Operative Complaint.

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). The court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The record need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-409 (2010).

A. The Settlement Was Reached Through Arm's Length Negotiations

The *Johnson* parties attended a full-day mediation with experienced wage and hour mediator, Mark Rudy, Esq. Gavron Decl. ¶15. Both during and prior to the mediation, the *Johnson* parties spoke at length about the strengths and weaknesses of each side's claims and defenses, the certifiability of the claims, and the scope of Defendant's liability. *Id.* ¶ 15. After a full day of mediation, the *Johnson* parties were able to reach an agreement on the key terms of settlement. *Id.* ¶ 16. In the months following the filing of the *Asis* Action and after further negotiation, the Parties agreed to a global settlement of all claims. *Id.* ¶ 16.

B. The Parties Engaged in Significant Investigation and Discovery

Plaintiffs' Counsel conducted a thorough investigation of the allegations involved in this case since its inception. *See* Gavron Decl. ¶ 13. The Parties exchanged written discovery and engaged in meet and confer efforts. Defendant produced hundreds of pages of documents, including employee handbooks, payroll policies, meal and rest break documents, and a sampling of employee clock-in and clock-out records and corresponding payroll records. *Id.* ¶ 13. Defendant also produced data regarding the number of current and former employees and the

1 average rate of pay for putative class members in advance of the *Johnson* mediation. *Id.* ¶ 13.
2 Using the data provided by Defendant, Plaintiffs’ Counsel conducted a full damage analysis with
3 the assistance of a consultant that was retained to analyze the sampling of time and pay data. *Id.*
4 ¶¶ 46-52.

5 **C. The Strengths and Weaknesses of the Claims**

6 Although Plaintiffs’ Counsel believe in the merits of Plaintiffs’ claims, they are
7 experienced and realistic, and understand the possibility of non-certification on one or more of
8 the theories alleged in the Operative Complaint. Gavron Decl. ¶ 32; Declaration of Larry W. Lee
9 (“L. Lee Decl.”) ¶ 4; Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶ 3; Declaration of
10 Nicholas Rosenthal (“Rosenthal Decl.”) ¶ 4; Declaration of Emil Davtyan (“Davtyan Decl.”) ¶ 8;
11 Declaration of David J. Lee (“D. Lee Decl.”) ¶ 5. These risks on class certification are
12 compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59
13 Cal. 4th 1 (2014).

14 **1. Failure to Pay Overtime Wages for All Hours Worked**

15 Plaintiffs allege that, as a pattern and practice, Defendant suffered and permitted non-
16 exempt employees to work without payment of overtime wages for all hours worked in a
17 workday and workweek. Gavron Decl. ¶ 33. More specifically, Plaintiffs allege that they were
18 required to perform off-the-clock work, such as undergoing COVID screenings, temperature
19 checks, and answering work-related trivia questions, and were not paid for their time.
20 Declaration of Jed Asis (“Asis Decl.”) ¶ 3; Declaration of Justin Watson (“Watson Decl.”) ¶ 3;
21 Declaration of Kevin Johnson (“Johnson Decl.”) ¶ 3.

22 Defendant argues that these claims are not suitable for class treatment because its policies
23 required accurate recording of time and prohibited off-the-clock work. Gavron Decl. ¶ 34.
24 Defendant’s written policies strictly prohibit non-exempt employees from working off the clock
25 for any reason. *Id.* Furthermore, all time spent working must be reported. *Id.* Defendant further
26 argues that individual questions predominate. Gavron Decl. ¶ 34. Citing to *Brinker Restaurant*
27 *Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) and its progeny, Defendant argues that its
28 liability is contingent on proof that Defendant knew or should have known that off-the-clock

1 work was occurring. In the absence of a uniform policy, Defendant contends that Plaintiffs will
2 not be able to establish the requisite knowledge through common proof and thus certification
3 would not have been granted. *Id.*

4 **2. Failure to Pay Overtime at the Regular Rate of Pay**

5 Defendant paid a variety of non-discretionary wages, including bonuses and
6 commissions. Gavron Decl. ¶ 35; Asis Decl. ¶ 5; Watson Decl. ¶ 5; Johnson Decl. ¶ 5. Plaintiffs
7 allege that Defendant did not include these non-discretionary wages in the regular rate
8 computation for the purpose of paying overtime wages. Gavron Decl. ¶ 35; Asis Decl. ¶ 5;
9 Watson Decl. ¶ 5; Johnson Decl. ¶ 5. Consequently, Plaintiffs contend that employees are owed
10 additional overtime wages based on the correct regular rate of pay, and derivative waiting time
11 and wage statement penalties. Gavron Decl. ¶ 35. Defendant denies that it failed to pay overtime
12 wages at the regular rate of pay. *Id.* Moreover, given that there is no dispute that Defendant paid
13 overtime wages, the potential range of damages is limited and primarily consists of derivative
14 penalties. *Id.*

15 **3. Failure to Provide Off-Duty Meal and Rest Periods and Pay**
16 **Meal/Rest Period Premiums at the Regular Rate of Pay**

17 Plaintiffs allege that Defendant did not include the value of non-discretionary wages in
18 the regular rate computation for the purpose of paying meal and rest period premiums. Gavron
19 Decl. ¶ 36; Asis Decl. ¶ 5; Watson Decl. ¶ 5; Johnson Decl. ¶ 5. Consequently, Plaintiffs contend
20 that employees are owed additional meal and rest period premiums based on the correct regular
21 rate of pay, and derivative waiting time and wage statement penalties. Gavron Decl. ¶ 36.

22 As explained in *Ferra v. Loews Hollywood Hotel, LLC*, employers must pay meal period
23 premiums at the regular rate of pay. 11 Cal. 5th 858 (2021). Importantly, at the time Plaintiffs
24 filed their action, the California Supreme Court had yet to decide *Ferra* and thus Defendant
25 vehemently contested Plaintiffs' interpretation of the law. *See Ferra v. Loews Hollywood Hotel,*
26 *LLC*, 40 Cal. App. 5th 1239, 1246, (2019), *rev'd*, 11 Cal. 5th 858, 489 P.3d 1166 (2021) ("We
27 agree with the trial court and with Loews, however, that the statutory terms "regular rate of pay"
28 and "regular rate of compensation" are not synonymous, and the premium for missed meal and

1 rest periods is the employee's base hourly wage.”).

2 Defendant argued several things in its defense. Most prominently, Defendant argued that
3 *Ferra* did not alleviate Plaintiffs of their burden to prove the underlying meal period violation.
4 In other words, even if Plaintiffs could show that Defendant paid premiums at less than the
5 regular rate of pay, Plaintiffs would still have to demonstrate that Defendant did not meet its
6 obligation under the Labor Code and *Brinker* to provide employees a meal period. *See Brinker*
7 *Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On the other
8 hand, the employer is not obligated to police meal breaks and ensure no work thereafter is
9 performed.”). This, Defendant argued, would result in a claim that could not be certified as a
10 class action because Defendant maintained and enforced legally compliant policies. Defendant
11 claimed this would require Plaintiffs to investigate and ask each putative class member the
12 reason time records may have triggered the payment of a premium or shown a deficient meal
13 period and whether a premium was, in fact, owed to the class member. Furthermore, given that
14 there is no dispute that Defendant paid meal and rest period premiums wages, the potential range
15 of damages is limited and primarily consists of derivative waiting time penalties. *Id.*

16 4. Failure to Pay Wages Upon Termination

17 Plaintiffs seek waiting time penalties predicated on Defendant’s alleged
18 underpayment/non-payment of wages, including for meal period premium wages, sick pay
19 wages, and overtime wages. Gavron Decl. ¶ 39. Watson Decl. ¶ 5; Johnson Decl. ¶ 5. Under the
20 Healthy Workplaces, Healthy Families Act of 2014, Cal. Lab. Code § 245 *et seq.* (“HWHFA”),
21 “[p]aid sick time for nonexempt employees shall be calculated in the **same manner as the**
22 **regular rate of pay** for the workweek in which the employee uses paid sick time, whether or not
23 the employee actually works overtime in that workweek.” Cal. Lab. Code § 226(l)(1) (emphasis
24 added). Here, Plaintiffs allege that during workweeks where an employee earned non-
25 discretionary wages and sick pay earnings, Defendant paid the sick pay at the employee’s base
26 hourly rate. Gavron Decl. ¶ 39; Asis Decl. ¶ 5; Watson Decl. ¶ 5; Johnson Decl. ¶ 5. Plaintiffs
27 contend that the sick pay should have been paid at the employee’s regular rate of pay, which
28 includes all non-discretionary pay. Gavron Decl. ¶ 39.

1 Defendant contested this claim on a number of grounds. Gavron Decl. ¶ 40. With respect
2 to the alleged unpaid sick time, Defendant contended that Plaintiffs could not recover sick leave
3 directly because there is no private right of action. *See* Cal. Lab. Code § 248.5 (providing only
4 that “the Labor Commissioner or the Attorney General may bring a civil action in a court of
5 competent jurisdiction against the employer or other person violating this article”); *see also, e.g.,*
6 *Titus v. McLane Foodservices, Inc.*, 2016 WL 4797297, at *4 (E.D. Cal. Sept. 14, 2016) (the sick
7 pay “statute provides that only the LWDA may recover civil penalties for a violation”);
8 *Schroeder v. Envoy Air, Inc.*, 2016 WL 11520388, at *11 (C.D. Cal. Sept. 27, 2016) (“because
9 the legislature did not clearly and unmistakably create a private right of action to enforce
10 section 246(h), the Court concludes that there is none available”).

11 Some courts have held that sick pay is not “wages” entitling employees to Section 203
12 penalties even if underpaid. *See McPherson v. EF Intercultural Found., Inc.*, 47 Cal. App. 5th
13 243, 263, 260 Cal. Rptr. 3d 640, 654 (2020), review denied (July 22, 2020) (“because paid sick
14 leave is not considered a form of “wages,” employers are not required to pay employees their
15 unused sick leave on termination—accrued or not. (§ 246, subd. (g)(1).)”).

16 Defendant also would have argued that, even if there were a private right of action and
17 any underpayment could be proven (which Defendant disputes), its payments to employees were
18 made pursuant to a good faith belief that it was paying sick pay and meal period premiums
19 correctly, and as a result, Plaintiffs cannot establish that Defendant “willfully” failed to pay
20 wages at separation of employment and/or that a good faith dispute exists as to whether the
21 allegedly underpaid monies were wages due. *Id.* This is a legal defense that, if successful, could
22 potentially defeat Plaintiffs’ Section 203 claim. *Chavez v. Converse, Inc.*, 2020 WL 1233919, at
23 *1 (N.D. Cal. 2020) (holding that an employer’s failure to pay is not willful where there is
24 uncertainty in the law or a “good faith mistaken belief that wages are not owed”). In *Naranjo v.*
25 *Spectrum Security Services, Inc.*, __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), review
26 granted 2023 WL 3745105 (May 31, 2023), the court upheld an employer’s good faith defense
27 to the plaintiff’s claim for waiting time penalties, pursuant to Labor Code § 203 The employer
28 argued that it had a viable legal defense, which precluded the imposition of waiting time

1 penalties because its acts were not “willful” within the meaning of the statute. *Naranjo* also
2 permitted a good faith defense to rebut the plaintiff’s claim for penalties, pursuant to Labor Code
3 § 226. Gavron Decl. ¶ 42. Even had Plaintiffs ultimately prevailed on the merits, given the
4 novelty of the legal questions it raised, Defendant may have sought immediate appellate review
5 through a writ or appeal.

6 **5. Wage Statement Claim**

7 Defendant maintains that any alleged omission of information from the wage statements
8 was not a “knowing and intentional failure” by Defendant to comply with Labor Code § 226(a),
9 and penalties are therefore unwarranted. *See Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128,
10 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its
11 conduct was not “knowing and intentional”); Gavron Decl. ¶ 50. Defendant also would have
12 argued that penalties under Section 226 are subject to a similar “good faith” defense as
13 articulated above in the context of Plaintiffs’ claims for waiting time penalties. *See, e.g.*,
14 *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) (“Where
15 an employer has a good faith belief that it is not in violation of Section 226, any violation is not
16 knowing and intentional.”); *Naranjo*, __ Cal. Rptr. 3d __, 2023 WL 2261253.

17 **6. Failure to Reimburse Employees for Personal Cell Phones**

18 Plaintiffs alleges that Defendant required Class Members to use their personal cell phones
19 for work-related purposes but did not reimburse employees for the associated costs. Gavron
20 Decl. ¶ 44; Asis Decl. ¶ 7; Watson Decl. ¶ 7; Johnson Decl. ¶ 7. Defendant disputes the existence
21 of a common policy that requires employees to use personal cell phones for work-related
22 purposes because it maintained compliant written reimbursement policies. Gavron Decl. ¶ 44.
23 Some courts have denied class certification of Section 2802 claims because liability hinges on
24 individualized inquiries into the actual expenses incurred by class members and whether each
25 class member was fully reimbursed pursuant to the policy.

26 **7. Derivative PAGA Penalties**

27 Plaintiffs pursue derivative PAGA penalties based on the Labor Code violations
28 discussed above. Gavron Decl. ¶ 45. The trial court has the discretion to reduce PAGA civil

penalties “if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See* Labor Code § 2699(e)(2). Plaintiffs’ Counsel is not blind to the fact that Defendant could be persuasive to the Court at trial and that the penalties herein could be substantially reduced. Gavron Decl. ¶ 45.

D. Potential Estimated Value of the Class and Representative PAGA Claims

Based on the class data provided by Defendant, Plaintiffs’ Counsel estimates that Defendant could face liability ranging from approximately \$54 million to \$100 million for the class and PAGA claims. Gavron Decl. ¶ 46. Thus, the Gross Settlement Amount represents somewhere between 16.6 %to 8.9% of the realistic maximum damages and penalties at issue. *Id.* ¶ 46.²

1. Failure to Pay Overtime Wages for All Hours Worked & Regular Rate Claim

The data produced by Defendant indicates that there are approximately 12,500 Class Members who worked 600,000 workweeks during the Class Period. Gavron Decl. ¶ 47. The average hourly rate of these employees is \$14.95. *Id.* While difficult to quantify, Plaintiffs assumed that class members would be entitled to ½ hour of overtime pay for each work week associated with the off-the-clock claims. This results in a total potential exposure of approximately \$6.7 million of uncompensated overtime time (600,000 work weeks x 1/2 hour a week at \$22.43 per hour (\$14.95 x 1.5)). *Id.* To the extent that any damages arise from the alleged overtime regular rate violation, this amount is reflected in the valuation of the derivative waiting time penalties claim because the difference in payment of actual overtime hours likely a

² Courts have held that gross settlements approximating between only 8 and 25% of the defendant’s potential exposure are fair and reasonable. *See Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (approving class settlement recovering between 8.5% and 25% of the defendant’s potential exposure); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (approving wage and hour class settlement which obtained only 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that settlement of approximately 15% of the potential recovery was fair and reasonable).

1 relatively small portion of Defendant’s reasonable potential exposure. Gavron Decl. ¶ 47.

2 **2. Failure to Pay Meal and Rest Period Premiums at Regular Rate of**
3 **Compensation**

4 Plaintiffs’ expert determined from the data produced in advance of mediation that,
5 according to Plaintiffs’ theory of liability, Defendant undercompensated employees who
6 received a meal or rest period premium payment by approximately \$76,128. Gavron Decl. ¶ 48.
7 Plaintiffs argued that these underpayments triggered derivative waiting time and wage statement
8 penalties, addressed below. Gavron Decl. ¶ 48. Assuming a penalty would apply for any late,
9 missed, or short meal period identified in Defendant’s records, which demonstrated an
10 approximately 58% violation rate, Plaintiffs also estimated approximately \$11 million in unpaid
11 meal period premium wages. Gavron Decl. ¶ 48.

12 **3. Failure to Pay Wages Upon Termination**

13 Based on Defendant’s payroll data, Plaintiffs estimated approximately 9,970 Class
14 Members who separated employment during the Class Period. Gavron Decl. ¶ 49. The average
15 straight time hourly rate of these employees was \$14.95. *Id.* Thus, the maximum amount of
16 waiting time penalties could total as high as \$35 million [$\$14.95 \times 8 \text{ hours} \times 30 \text{ days} \times 9,970$
17 Class Members]. *Id.* On the other hand, the average length of shift was closer to 6 hours, which
18 would result in a lower exposure of approximately \$28 million. *Id.* These maximum exposures
19 do not consider Defendant’s arguments regarding its good faith defense addressed above.

20 **4. Wage Statement Claim**

21 Plaintiffs’ expert estimated the maximum Labor Code § 226(e) penalties totaled
22 approximately \$2.2 million, which was premised on approximately 24,000 pay periods including
23 a wage statement violation. *Id.* As noted above, Defendant likely would have asserted a “good
24 faith” defense to these penalties too.

25 **5. Failure to Reimburse Employees**

26 Plaintiffs assumed that Defendant should have reimbursed each Class Member \$10.00 per
27 month for using their personal cell phone for work-related purposes. Gavron Decl. ¶ 51. This
28 resulted in approximately \$1.5 million in exposure for Defendant ($600,000 \text{ workweeks} \times \2.50

per workweek). Gavron Decl. ¶ 51.

6. PAGA Penalties

Plaintiffs analyzed this claim by assuming a civil penalty of \$100 per pay period during the PAGA Period, which resulted in penalties as high as approximately \$44 million (440,000 pay periods x \$100 penalty). Gavron Decl. ¶ 52.

It is unrealistic to assume that the Court will award the full amount of PAGA penalties if Plaintiffs are able to prevail at trial. The recovery is uncertain because the Court can decline to award the full amount of PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” As shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539; see *O’Connor v. Uber Techs., Inc.*, 2016 WL 4398271, at *17 (noting that even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). If the Court exercised the same discretion here, the PAGA penalties would be reduced from approximately \$44 million to \$4.4 million.

E. The Proposed Payment to Class Representatives

Plaintiffs request an enhancement of Ten Thousand Dollars (\$10,000.00) for each Plaintiff. Plaintiffs personally met with Plaintiffs’ Counsel on various occasions to discuss the case, provide documents and information to their counsel, and review the Settlement Agreement. Asis Decl. ¶ 9; Watson Decl. ¶ 9; Johnson Decl. ¶ 9. In addition to the invaluable services that they provided, Plaintiffs also took significant risks, both professionally and monetarily, in acting as Class Representatives and seeking benefits on behalf of the Class. Because the claims alleged by the Class Representatives involved the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying the fees and costs of Defendant, had Plaintiffs not prevailed in this action.

1 Further, given that future employers are much less likely to hire individuals who have
2 filed suit against their prior employer, particularly cases of this nature, Plaintiffs may face
3 prejudice in the future from other potential employers. Plaintiffs took this risk upon themselves
4 and the whole Class benefited from these risks taken by Plaintiffs. Class Members did not have
5 to file individual lawsuits and bear the risks of payment of fees and costs if they did not prevail,
6 nor did they have to face the potential for retaliation and not getting future employment had they
7 filed a public lawsuit. Each Plaintiff also agreed to provide a general release of claims and
8 waiver of Civil Code § 1542. Agreement ¶ 16.

9 Notably, courts have routinely granted approval of representative enhancements for far
10 greater amounts than the \$10,000.00 sought by each Plaintiff in this case. *See, e.g., Van Vranken*
11 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
12 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
13 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v.*
14 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
15 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio
16 1991) (\$50,000 awarded to each class representative). Here, Plaintiffs request an enhancement of
17 \$10,000 each, which is reasonable and consistent with case law.

18 **F. The Requested Attorneys' Fees and Litigation Costs**

19 California state and federal courts have recognized that an appropriate method for
20 determining award of attorneys' fees is based on a percentage of the total value of benefits to
21 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
22 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*,
23 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
24 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
25 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
26 bear the entire burden alone." *Vincent*, 557 F.2d at 769.

27 Under California law, the award of attorneys' fees in common fund wage and hour class
28 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1

1 Cal. 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state
2 courts in holding that when class action litigation establishes a monetary fund for the benefit of
3 the class members, and the trial court in its equitable powers awards class counsel a fee out of
4 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
5 percentage of the fund created”). Under the percentage of the fund method, the Court’s objective
6 remains to “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
7 363 (7th Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is
8 to set it at a level that will approximate what the market will set...The judge, in other words, is
9 trying to mimic the market in legal services”).

10 The results delivered by Plaintiffs’ Counsel also support the requested percentage of the
11 fund. Here, the Parties have agreed to a payment of a maximum of thirty-five percent (35%) of
12 the Gross Settlement Amount (or \$3,139,500.00) for payment to Plaintiffs’ Counsel as attorneys’
13 fees. The Parties have agreed to a payment of the foregoing attorney’s fees and, thus, this
14 payment should be presumed to be fair. Further, it is not uncommon for courts to award
15 attorneys’ fees as approximately one-third or 33.3% of the settlement amount in wage and hour
16 class action settlements. For example, in *McKinnon v. Best Buy Co., Inc.*, (Alameda Superior
17 Court Case No. RG03082294), the court awarded over \$9 million as attorneys’ fees, which was
18 33% of the maximum settlement amount of \$26.9 million.

19 Further, the Parties have agreed to reimbursement of Plaintiffs’ Counsel’s litigation costs.
20 Class Counsel have expended costs at their own risk, for example, to file this instant action,
21 effect service of process, and pay mediation fees and other litigation related costs. Gavron Decl.
22 ¶ 54. The agreement allocates up to \$35,000 for costs. Based on the foregoing, the court should
23 preliminarily approve the attorney’s fees and costs being requested by the Parties.

24 **G. The Settlement Administrator’s Fees are Reasonable**

25 The Parties request that Phoenix Settlement Administrators be appointed as the claims
26 representative in this case. The Parties have agreed to an estimated not to exceed payment of
27 \$65,000.00 to Phoenix Settlement Administrators to send notices and to administer this
28 settlement. Phoenix is a well-recognized class action settlement administrator. Gavron Decl. ¶

27.

V. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS

A. The Class is Ascertainable and Sufficiently Numerous

The Class that Plaintiffs seek to conditionally certify is ascertainable. “Class members are ‘ascertainable’ where they may be readily identified without unreasonable expense or time by reference to official records.” *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). Here, members of the Class are readily identifiable. Defendant has determined that there are approximately 12,500 individuals that comprise the Class, which is sufficiently numerous. *See* Gavron Decl. ¶ 20.

B. There are Common Questions of Law and Plaintiffs’ Claims are Typical

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981) Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendants’ policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiffs allege, in part, that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by: (1) failing to pay overtime wages for all hours worked and at the correct rate of pay for off-the-clock work; (2) failing to provide timely and full-length meal and rest breaks to employees; (3) failing to pay meal and rest period premiums at the regular rate of pay when employees also earned non-discretionary pay during the same pay period; (4) failing to provide accurate itemized wage statements; (5) failing to pay all wages owed upon separation of employment, including sick pay wages, overtime wages, and meal and rest period compensation; (6) failing to reimburse employees for work-related expenses; and (7) engaging in unfair business practices. Asis Decl. ¶ 3-7; Watson Decl. ¶ 3-7; Johnson Decl. ¶¶ 3-7. In other words, Plaintiffs were allegedly subjected to the same policy and practice as other Class Members. Thus, Plaintiffs’ claims are typical to those of Class Members.

1 **C. Plaintiffs and Plaintiffs' Counsel Have Adequately Represented the Class**

2 The adequacy requirement is also met. "Adequacy of representation depends on whether
3 the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests
4 are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442,
5 450 (1976). Here, Plaintiffs do not have any interests adverse to the Class, nor have any such
6 issues been raised or presented. Asis Decl. ¶ 8; Watson Decl. ¶ 8; Johnson Decl. ¶ 8. Plaintiffs
7 have taken all necessary steps to represent the interests of the Class, by providing information
8 and documents. Asis Decl. ¶ 9; Watson Decl. ¶ 9; Johnson Decl. ¶ 9. For such reasons, Plaintiffs
9 have adequately represented the Class Members and will continue to do so.

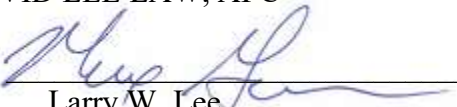
10 Further, as detailed in their declarations, Plaintiffs' Counsel are experienced and well-
11 qualified class action litigators who have litigated many wage and hour class actions and have
12 each been certified as class counsel in numerous other class actions, particularly wage and hour
13 class actions. Gavron Decl. ¶¶ 55-62; L. Lee Decl. ¶¶ 6-8; Agnew Decl. ¶¶ 5-10; Rosenthal Decl.
14 ¶¶ 2-3; Davtyan Decl. ¶¶ 3-6; D. Lee Decl. ¶¶ 7-12. From the inception of the case, Plaintiffs'
15 Counsel have solely represented the interests of the Class. Gavron Decl. ¶ 54.

16 **VI. CONCLUSION & NOTICE TO THE LWDA**

17 In conjunction with filing this Motion, Plaintiffs provided notice to the LWDA. Gavron
18 Decl. ¶ 64; Ex. B. For the reasons set forth above, Plaintiffs request that the Court grant this
19 Motion.

20
21 Dated: September 1, 2023

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