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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

**CASCADE DRILLING WAGE AND
HOUR CASES**

List of Actions:

Martinez, et al. v. Cascade Drilling LP,
Alameda Case No. RG21090743

Lilla v. Cascade Drilling, LP, Contra Costa
Case No. C211568

Case No: RG21090743

ASSIGNED FOR ALL PURPOSES TO
JUDGE STEPHEN KAUS, DEPARTMENT 19

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

Date: June 26, 2023
Time: 3:00 p.m.
Dept. 19
Judge: The Hon. Stephen Kaus

Reservation No: A-21090743-001

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1 **PLEASE TAKE NOTICE THAT** on June 26, 2023 at 3:00 p.m., or as soon thereafter as
2 the matter may be heard, in Department 19 of the above-entitled Court, located at 1221 Oak
3 Street, Oakland, 4th Floor, California 94612, Plaintiffs Eugene Martinez, Robert Williams and
4 Jonathan Lilla (collectively “Plaintiffs”) will and hereby do move for the entry of an Order and
5 Judgment Granting Final Approval of Class and PAGA Action Settlement.

6 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
7 provides for court approval of the settlement of a class action. The basis for this Motion is that
8 the proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement
9 class as a whole, and that the procedures utilized were adequate to ensure the opportunity of the
10 proposed settlement Class Members to participate in, opt out of, or object to the settlement. This
11 motion also is made pursuant to Labor Code § 2699(l)(2), which provides for court approval of a
12 settlement of a representative Private Attorneys General Act, Labor Code §§ 2699, *et seq.*, action.

13 This Motion will be based on the Memorandum of Points and Authorities set forth herein,
14 the Stipulation of Class Action and Private Attorney General Act Settlement and Release, the
15 Declarations of Eric A. Grover, Robert Spencer, Raul Perez, Edwin Aiwasian and Eric Springer
16 of Simpluris, Inc. and such evidence or oral argument as may be presented at the hearing, and on
17 the complete records and file herein.

18
19 Respectfully submitted,

20 Dated: June 1, 2023

KELLER GROVER LLP

21
22 By: _____



23 ERIC A. GROVER

24 ROBERT W. SPENCER

25 Attorneys for Plaintiffs and co-Class Counsel
26
27
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this unopposed motion, Plaintiffs Eugene Martinez and Robert Williams (“*Martinez Plaintiffs*”) and Plaintiff Jonathan Lilla (collectively, “*Plaintiffs*” or “*Class Representatives*”) seek final approval of the class action settlement reached with Cascade Drilling LP (“*Cascade*” or “*Defendant*”). On March 3, 2023, the Court granted preliminary approval of the proposed settlement, all of the terms of which are set forth in the Parties’ Stipulation of Class Action and Private Attorney General Act Settlement and Release (“*Stipulation*”).¹

The proposed settlement satisfies all of the criteria for final settlement approval under California law because it is fair, adequate, and reasonable.² The notice of the settlement was distributed via U.S. mail.³ The Class Members’ response to the settlement confirms that final settlement approval is appropriate. There have been no objections to and only one opt-out from the settlement.⁴ Thus, 684 Participating Class Members will receive settlement payments averaging \$1,125.24.⁵

Class Members were not required to submit claim forms to participate in the settlement.⁶ The Net Settlement Fund (“*NSF*”) will be distributed to all Participating Class Members (*i.e.*, those Class Members who did not submit a valid Request for Exclusion).⁷ Each Participating Class Member will receive an Individual Settlement Payment based on the ratio of his or her number of Qualifying Workweeks divided by the total number of Qualifying Workweeks for the

¹ See Declaration of Eric A. Grover submitted in support of this Motion (“*Grover Decl.*”), Ex. 1 (the *Stipulation*); Ex. 2 (the Court’s March 3, 2023 Order Granting Motion for Preliminary Approval of Class Action and Private Attorney General Act Settlement (“*Preliminary Approval Order*”). All “*Ex.*” references are exhibits to the Grover Declaration unless otherwise stated. Plaintiffs and Defendants are referred to collectively as the “*Parties*.”

² See Ex. 1; see also, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

³ Declaration of Eric Springer of Simpluris, Inc. (“*Simpluris*”) filed with this brief, (“*Simpluris Decl.*”) at ¶¶ 8, 11.

⁴ *Simpluris Decl.* at ¶¶ 12,13; *Grover Decl.* at ¶ 28.

⁵ *Simpluris Decl.* at ¶ 14; *Grover Decl.* at ¶¶ 30, 38; see Ex. 1 at ¶¶ 12-14, 44-46.

⁶ Ex. 1 at ¶ 46(a), see ¶ 13; *Grover Decl.* at ¶ 30.

⁷ Ex. 1 at ¶¶ 44-46; see also, ¶¶ 14, 22.

1 for the entire Settlement Class, after the Pick-Up Stix Workweeks have been subtracted,
2 according to the formula set forth in the Stipulation.⁸

3 Because the settlement achieves outstanding results for the Settlement Class, Plaintiffs
4 respectfully request, without opposition from Defendant, that the Court approve the settlement as
5 fair, adequate, and reasonable, and enter judgment.

6 **II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS**

7 On March 3, 2021, the *Martinez* Plaintiffs filed their initial putative class action complaint
8 in Alameda County Superior Court and the operative First Amended Complaint on April 13,
9 2021. The case is entitled *Martinez, et al. v. Cascade Drilling, L.P.* and assigned case number.
10 RG21090743. (“*Martinez*”). The *Martinez* Plaintiffs brought the action on behalf of themselves
11 and other former and current California employees who have worked for Defendant as non-
12 exempt field employees at various projects in California. *Martinez* alleges that Defendant
13 uniformly failed to pay for all pre- and post-shift work time and mandatory time spent between
14 projects, did not provide timely, off-duty meal periods, fails to authorize and permit timely rest
15 breaks, provided inaccurate wage statements and did not pay all wages due upon separation of
16 employment. Based on that conduct, *Martinez* alleges that Defendant violated Labor Code
17 §§ 201-203, 204b, 226(a), 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
18 Wage Order 16, and Business and Professions Code §§ 17200, *et seq.* *Martinez* also alleges
19 representative PAGA claims on behalf of all aggrieved employees and California’s Labor and
20 Workforce Development Agency (“LWDA”).⁹

21 On July 29, 2021, Plaintiff Lilla filed a putative class action alleging the same or very
22 similar claims against Defendant in Contra Costa County Superior Court. *Lilla* also alleges that
23 Defendant did not reimburse the field workers for business expenses that they incurred
24 performing their duties, in violation of Labor Code § 2802 and did not keep required payroll
25 records, in violation of § 1174.¹⁰ The Alameda Superior Court issued an order coordinating the

26
27 ⁸ Ex. 1 at ¶ 46(a); *see also*, ¶¶ 14, 22.

28 ⁹ Grover Decl. at ¶ 6.

¹⁰ Grover Decl. at ¶ 7; *see also*, Declaration of Edwin Aiwazian of Lawyers for Justice, PC
(*Cont’d*)

Martinez and Lilla actions on April 19, 2022.¹¹

Defendant has vigorously denied all of the allegations in their entirety. To date, no class has been certified and no court has made any findings that Defendant engaged in any wrongdoing or in any wrongful conduct or otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.¹²

The Parties have engaged in formal discovery in which both Parties produced documents and exchanged written discovery responses.¹³ During the discovery process, and after Defendant obtained 168 purported settlement agreements from individual putative class members (*i.e.*, the “Pick Up Stix Settlement Group”), the Parties began discussing a possible settlement and ultimately agreed to mediate. In addition to the extensive formal discovery already exchanged, in preparation for the mediation, Defendant provided additional relevant documents and information, including:

(A) The number of Class Members:

- o There are 685 Class Members who worked 46,162 Workweeks, of which 29,311 were Qualifying Workweeks, *i.e.*, total Workweeks less the weeks covered by the purported releases with the Pick Up Stix Settlement Group.
- o There are an estimated 16,851 weeks worked by the members of the Pick Up Stix Settlement Group covered by the purported settlement agreements.

(B) The number of PAGA Members:

- o There are approximately 258 PAGA Members.
- o Aggrieved Employees worked a total of approximately 14,277 Qualified Pay Periods during the PAGA Period.

(C) 168 Class Members signed purported releases of their claims in the

submitted in support Plaintiffs’ motion (“Aiwazian Decl.”) at ¶¶ 2-3.

¹¹ Grover Decl. at ¶ 8.

¹² Grover Decl. at ¶ 9.

¹³ Grover Decl. at ¶ 11.

Martinez and Lilla actions.¹⁴

- o Defendant paid \$119,500 to the Pick Up Stix Settlement Group.
- o Prior to final approval, Defendant discovered a calculation error showing that \$119,500, not \$132,000, had been paid to the Pick Up Stix Settlement Group as reflected in paragraph 12 of the Stipulation. Accordingly, the Gross Settlement Amount will now include \$1,480,500 in “new money” (an increase from the \$1,468,000 referenced in paragraph 12 of the Stipulation) to ensure that Defendant has paid the full \$1,600,000 of the Gross Settlement Amount.¹⁵

On May 20, 2022, the Parties participated in an all-day joint mediation session with skilled mediator, Jill R. Sperber, Esq. who has significant experience mediating wage and hour class actions.¹⁶ The Parties reached a tentative agreement to resolve the matter at the mediation, subject to the Court’s approval.¹⁷ All terms of the Parties’ settlement are set forth in the Stipulation.¹⁸

Plaintiffs moved for preliminary approval of the settlement on November 30, 2022.¹⁹

III. THE PRELIMINARY APPROVAL AND NOTICE PROCESS

On March 3, 2023, the Court preliminarily approved the settlement, including the Stipulation, and provisionally certified the Settlement Class.²⁰

In granting preliminary approval, the Court found that the settlement appeared to be within the range of reasonableness of settlements that could ultimately be given final approval and implicitly found Class Counsel’s proffered arguments and explanations supporting the

¹⁴ Those Class Members are referred to as the “Pick Up Stix Settlement Group” in the Stipulation. Ex. 1 at ¶ 23. *See Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796.

¹⁵ Grover Decl. at ¶ 14.

¹⁶ Grover Decl. at ¶ 15; Aiwarzian Decl. at ¶ 6.

¹⁷ Grover Decl. at ¶ 15; Aiwarzian Decl. at ¶ 6.

¹⁸ Grover Decl. at ¶¶ 5, 16; Ex. 1.

¹⁹ Grover Decl. at ¶ 17.

²⁰ Ex. 2 at p. 1.

1 Settlement to be reasonable.²¹ The Court also approved the distribution of the Notice of Class
2 Action Settlement (“Notice”).²²

3 From its records, Defendant identified 685 Class Members and provided the information
4 to Simpluris, Inc. (“Simpluris”), the Court-approved Settlement Administrator.²³ On March 20,
5 2023, Simpluris mailed the Court-approved Notice of Class Action Settlement (“Notice”) via
6 U.S. mail to the 685 Class Members on the class list.²⁴ 63 Notices were returned by the Post
7 Office. Simpluris was able to locate an updated address for 32 of the returned Notices.
8 Ultimately, all but 31 of the Notices were delivered; a 95% success rate for the mailing.²⁵

9 All Class Members had 45 days from the date that Simpluris initially mailed the Notice to
10 them to opt out of or object to the settlement.²⁶ The deadline for Class Members to opt out or
11 object was May 4, 2023.²⁷ Simpluris has received no objections, timely or late.²⁸ Simpluris has
12 received only one request for exclusion, timely or late.²⁹ Class Counsel has received no opt outs
13 or objections, timely or late.³⁰

14 The Notice also provided Class Members with information on how to dispute the number
15 of Qualifying Workweeks stated on their individualized Notice.³¹ One Class Member disputed
16 the number of Qualifying Workweeks from Defendant’s records that was pre-printed on his
17 Notice. Simpluris worked with the Defendant to resolve the dispute and Simpluris has informed
18 the Class Member that the dispute was not valid.³²

19
20
21 ²¹ See Ex. 2.

22 ²² Ex. 2 at p. 1.

23 ²³ Simpluris Decl. at ¶ 6; see Ex. 2.

24 ²⁴ Simpluris Decl. at ¶¶ 7, 8; Grover Decl. at ¶ 26.

25 ²⁵ Simpluris Decl. at ¶ 11; Grover Decl. at ¶ 27.

26 ²⁶ Grover Decl. at ¶¶ 28, 35; Ex. 1 at ¶ 33, *see also*, ¶¶ 15, 32, 33, 55, 59; Simpluris Decl. at ¶ 8.

27 ²⁷ Grover Decl. at ¶¶ 28, 35; *see* Simpluris Decl. at ¶ 8; Ex. 1 at ¶ 33.

28 ²⁸ Simpluris Decl. at ¶ 13.

²⁹ Simpluris Decl. at ¶ 12.

³⁰ Grover Decl. at ¶¶ 28, 35.

³¹ Simpluris Decl., Ex. A; *see* Ex. 1 at ¶¶ 28, 33, 53.

³² Simpluris Decl. at ¶ 10; Grover Decl. at ¶ 29.

IV. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class

As approved in the March 3, 2023 Preliminary Approval Order and set forth in the Stipulation, the Settlement Class is defined as:

All persons who worked for Defendant as non-exempt, hourly employees in California at any time from September 6, 2016 through June 30, 2022.³³

The Class Period is September 6, 2016 through June 30, 2022, inclusive.³⁴ In this memorandum, the members of the Settlement Class also are referred to collectively as the “Class Members.” Defendant represents that there are approximately 685 Class Members.³⁵

The Parties also agreed that “PAGA Members” are defined as:

all persons who worked for Defendant as non-exempt, hourly employees in California at any time from February 4, 2020 through June 30, 2022.³⁶

The PAGA Period is from February 4, 2020 through June 30, 2022, inclusive.³⁷ Defendant represents that there are 258 PAGA Members.³⁸

The Pick Up Stix Settlement Group is defined as “those Participating Class Members who signed a release of claims asserted in” the Actions.³⁹ Participating Class Members are those Settlement Class Members who do not opt out of the settlement.⁴⁰

B. Benefits to the Class

The settlement is a good compromise for the alleged damages of absent Class Members. The settlement provides for a Gross Settlement Amount (“GSA”) of \$1,600,000 (made up of \$1,480,500 in new money in addition to the \$119,500 already paid to the Pick Up Stix Settlement

³³ See Ex. 2; Ex. 1 at ¶ 5.

³⁴ Ex. 1 at ¶ 6.

³⁵ Ex. 1 at ¶ 5; Simpluris Decl. at ¶ 6.

³⁶ Ex. 1 at ¶ 18.

³⁷ Ex. 1 at ¶ 19.

³⁸ Ex. 1 at ¶ 18.

³⁹ Ex. 1 at ¶ 23.

⁴⁰ Grover Decl. at ¶ 22.

Group), plus the employer-side payroll taxes, to resolve the claims covered by the settlement.⁴¹ After subtracting out the amounts allocated to pay the costs of administration (\$10,000), Class Counsel's fees (up to \$533,333) and actual out-of-pocket costs and expenses (which are estimated not to exceed \$25,000), the Class Representatives' Service Awards (up to \$30,000 combined), the LWDA's portion of the PAGA Settlement Amount (\$75,000), and the PAGA Member's portion of the PAGA Settlement Amount (\$25,000), all of which are subject to the Court's approval, and the Pick Up Stix Payment (\$119,500), the NSF equals \$769,667.⁴² The NSF will be distributed to all Participating Class Members, *i.e.*, all Class Members who have not timely opted out, based on the formula set forth in the Stipulation and summarized below.⁴³ There is no reversion of the NSF to Defendant.⁴⁴

The Stipulation provides that NSF will be distributed proportionally based on the number of Qualifying Workweeks each Class Member worked during the Class Period.⁴⁵ To determine each Participating Class Member's estimated Individual Settlement Payment from the NSF, the Settlement Administrator will first determine the number of Qualifying Workweeks by subtracting the total number of Pick Up Stix Workweeks⁴⁶ from the total number of Workweeks. The NSF will then be allocated to Class Members by dividing the remaining NSF by the aggregate total number of Qualifying Workweeks, resulting in the "Workweek Value." All Class Members will be credited with at least one Qualifying Workweek during the Class Period, including members of the Pick Up Stix Settlement Group. Each Class Member's Individual Settlement Payment from the NSF will be calculated by multiplying that Class Member's total number of Qualifying Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically

⁴¹ Grover Decl. at ¶¶ 31-32.

⁴² Ex. 1 at ¶¶ 14, 38-42; Grover Decl. at ¶ 33.

⁴³ Ex. 1 at ¶¶ 44, 46, *see also*, ¶ 14; Grover Decl. at ¶ 33.

⁴⁴ Ex. 1 at ¶ 44; Grover Decl. at ¶ 32.

⁴⁵ Ex. 1 at ¶ 46(a).

⁴⁶ "Pick Up Stix Workweeks" are defined as "those Workweeks that are covered by the releases signed by the Pick Up Stix Settlement Group." Ex. 1 at ¶ 25, *see* ¶ 23.

1 set forth in the Stipulation, including employee-side tax withholdings or deductions. Settlement
2 Class Members are not required to submit a claim to receive an Individual Settlement Payment.⁴⁷

3 Because only one Class Member opted out, the average Individual Settlement Payment
4 will be approximately \$1,125.24.⁴⁸

5 **C. Payments to the Aggrieved Employees and the State.**

6 The Parties have agreed to allocate \$100,000 of the GSA to settle the PAGA claims,
7 referred to as the PAGA Settlement Amount.⁴⁹ Labor Code § 2699(i) requires that the LWDA
8 receive 75% (\$75,000) of the PAGA settlement amount and Aggrieved Employees receive 25%
9 (\$25,000).⁵⁰

10 To distribute the 25% allocated to the Aggrieved Employees, the Settlement
11 Administrator will distribute payments from the PAGA Fund according to the formula set forth in
12 the Stipulation.⁵¹ The Settlement Administrator will divide the PAGA Fund by the aggregate
13 total number of Qualifying Workweeks during the PAGA Period, resulting in the “PAGA
14 Workweek Value.” Each PAGA Member’s Individual Settlement Payment from the PAGA Fund
15 will be calculated by multiplying each individual PAGA Member’s total number of Qualifying
16 Workweeks by the PAGA Workweek Value. All PAGA Members shall be credited with at least
17 one Qualifying Workweek during the PAGA Period. The entire PAGA Fund will be disbursed to
18 the PAGA Members.⁵²

19 **D. Other settlement terms.**

20 All Individual Settlement Payment checks issued to Participating Class Members will be
21 valid for 180 days from the date of issuance.⁵³ The settlement provides that, after that time
22 period, any funds represented by undeliverable or uncashed checks issuance will be tendered to
23

24 ⁴⁷ Ex. 1 at ¶ 46(a), see ¶ 13.

25 ⁴⁸ Grover Decl. at ¶ 38; Simpluris Decl. at ¶ 14.

26 ⁴⁹ Lab. Code § 2699(f); Ex. 1 at ¶¶ 20, 42.

27 ⁵⁰ Lab. Code § 2699(i).

28 ⁵¹ Ex. 1 at ¶¶ 20, 45, 46(b).

⁵² Ex. 1 at ¶ 46(b).

⁵³ Ex. 1 at ¶ 62.

1 Worksafe.⁵⁴ Worksafe is a California-based organization dedicated to promoting and protecting
2 the basic right of all people to a safe and healthy workplace.⁵⁵ The Parties agree that this results in
3 no unpaid residual under California Civil Procedure Code § 384, as the entire NSF will be paid
4 out to the Participating Class Members.⁵⁶

5 **V. LEGAL ANALYSIS**

6 When deciding whether to grant final approval of a class-action settlement, California
7 courts ensure that notice was given consistent with the preliminary approval and then examine
8 whether the settlement as a whole is fair, adequate and reasonable. Here, the notice given was
9 consistent with the Preliminary Approval Order.⁵⁷ The Class Members' response confirms the
10 Court's preliminary determination that the settlement is fair, adequate and reasonable.

11 **A. The notice procedure was adequate and reasonable.**

12 California law vests the Court with broad discretion in fashioning an appropriate notice
13 program.⁵⁸ To protect the rights of absent class members, the parties must provide class members
14 with the best notice practicable of a potential class action settlement.⁵⁹ The content and method
15 of the notice should be designed to apprise the class members of the terms of the proposed
16 settlement and of the class members' rights regarding the settlement.⁶⁰

17 The Notice approved by the Court met these requirements: it identified the parties and
18 described the lawsuit, the Class, the settlement amount, the proposed method for distribution of
19 the Gross Settlement Amount, the proposed amount of the enhancement awards to the named
20 Plaintiffs, and the requested amount for attorneys' fees and costs.⁶¹ The Notice described the

21 ⁵⁴ Ex. 1 at ¶ 62.

22 ⁵⁵ See Worksafe's website: <https://worksafe.org/>.

23 ⁵⁶ Grover Decl. at ¶ 47.

24 ⁵⁷ Ex. 2; Simpluris Decl. at ¶¶ 5-8, 11, Ex. A (Notice).

25 ⁵⁸ See Cal. Civ. Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74.

26 ⁵⁹ *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin*
(1974) 417 U.S. 156, 174-76 (individual notice must be sent to all class members who can be
27 identified through reasonable efforts).

28 ⁶⁰ See *Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. Am. Radiator &*
Standard Sanitary Corp. (E.D. Pa. 1970) 323 F. Supp. 364, 378.

⁶¹ See Simpluris Decl. at ¶ 8, Ex. A.

1 proposed settlement with enough specificity to allow Class Members to make an informed choice
2 whether to opt-out or object and how and when they could do so. Finally, the Notice provided the
3 schedule for the hearing on final approval of the settlement and informed Class Members how to
4 obtain additional information about the settlement.⁶²

5 The California Supreme Court has held that notice is appropriate if it has a “reasonable
6 chance of reaching a substantial percentage of the class members ...”⁶³ Notice must be
7 reasonable under the circumstances.⁶⁴ In this case, the Notice was successfully mailed to all but
8 31 of the Class Members.⁶⁵ The Notice was reasonable and adequate.

9 “PAGA has no notice requirements for unnamed aggrieved employees, nor may such
10 employees opt out of a PAGA action.”⁶⁶ Even so, the Notice informed Settlement Class Members
11 and PAGA Members of the PAGA Settlement and each Class Member’s and PAGA Member’s
12 estimated Individual Settlement Payment and the formula for calculating Individual Settlement
13 Payments.⁶⁷

14 **B. Final settlement approval is appropriate.**

15 The settlement is fair, adequate, and reasonable because it provides substantial benefits to
16 Class Members and the general public. The fairness, adequacy, and reasonableness of the
17 settlement are illustrated by the fact that not one of 685 Class Members filed an objection to the
18 settlement and only a single Class Member opted out.⁶⁸ Under the legal standards used by
19 California courts to determine whether class action settlements should be approved, this
20 settlement warrants approval.

21 1. The three-step approval process

22 The law favors settlement, particularly in class actions and other complex cases where
23

24 ⁶² *Id.*

25 ⁶³ *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 861.

26 ⁶⁴ *Mullane, supra*, 339 U.S. at 314.

27 ⁶⁵ Simpluris Decl. at ¶¶ 8, 11.

28 ⁶⁶ *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.

⁶⁷ Ex. 1 at ¶¶ 16, 52, Stipulation Exhibit A.

⁶⁸ Simpluris Decl. at ¶¶ 12, 13; Grover Decl. at ¶ 28, *see also*, ¶¶ 31-46.

substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.⁶⁹ “Where complex class action litigation is concerned,” there exists a “strong judicial policy that favors settlements.”⁷⁰ A class action, however, may not be dismissed, compromised, or settled without the approval of the court.⁷¹ Judicial proceedings under Federal Rule of Civil Procedure Rule 23 have led to a defined procedure and specific criteria for settlement approval in class action settlements, described in the Federal Judicial Center, Manual for Complex Litigation, Fourth (4th ed. 2004) (“Manual”) § 21.632, *et seq.*⁷² The Manual’s settlement approval procedure describes three distinct steps:

- (1) Preliminary approval of the proposed settlement at an informal hearing;
- (2) Dissemination of mailed and/or published notice of the settlement to all affected Class members; and
- (3) A “formal fairness hearing,” or final settlement approval hearing.⁷³

The first two steps of this process are now complete. The first step was completed when the Court granted preliminary approval.⁷⁴ In doing so, the Court determined that the settlement was within the range of possible final approval and that notice to the Class Members of the settlement’s terms and of the scheduling of the formal fairness hearing should be distributed.⁷⁵

The second step in the class action settlement approval process, the dissemination of the Notice, is complete as well.⁷⁶ The third and last step in the class action settlement approval

⁶⁹ See e.g., 4 Newberg on Class Actions 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Campbell v. Facebook, Inc.* (9th Cir. 2020) 951 F.3d 1106, 1120-21 (internal quotes omitted); *In re Hyundai & Kia Fuel Econ. Litig.* (9th Cir. 2019) 926 F.3d 539, 556 (en banc); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.

⁷⁰ *Campbell, supra*, 951 F.3d at 1120-21, quoting *In re Hyundai*, 926 F.3d at 556.

⁷¹ Cal. Rule of Court 3.769; Fed. R. Civ. Proc. 23(e).

⁷² “California courts may look to federal authority for guidance on matters involving class action procedures.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392.

⁷³ Manual, § 21.632-34.

⁷⁴ Ex. 2.

⁷⁵ See *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-35, overruled on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269-70; 4 Newberg, supra, § 11.25.

⁷⁶ See Ex.23; Simpluris Declaration generally, Ex. 1. See also, Cal. C.C.P. § 382.

process is the final approval hearing at which the Court shall determine whether the settlement is fair, adequate, and reasonable. At the final approval hearing, scheduled for June 26, 2023, Class Members will have the opportunity to be heard regarding the settlement, and Class Counsel will present evidence and argument in support of the settlement.⁷⁷

2. The terms of the settlement disclose no grounds to doubt its fairness.

Under Code of Civil Procedure § 382, a court inquires whether the settlement is “fair, adequate, and reasonable.”⁷⁸ A preliminary review of the terms of the proposed settlement shows that it is fair. During the course of this litigation, the Parties have engaged in significant investigation into the factual and legal claims presented in the complaints.⁷⁹ Defendant and Plaintiffs exchanged a considerable amount of information and documentation and further apprised each other of their respective factual contentions, legal theories, and defenses.⁸⁰ Moreover, during the course of their information exchange, the Parties have engaged in extensive good faith, arms-length negotiations aimed at settling their disputes.⁸¹

The settlement reached by the Parties provides monetary payments to Class Members. The presumption of fairness and adequacy is especially appropriate here because the reaction of Class Members has been overwhelmingly positive – not a single person has objected and only one person opted out of the settlement.⁸² Accordingly, because the four circumstances identified in *Dunk* are present here, it is appropriate for the Court to presume that the settlement is worthy of final approval.⁸³

3. Each of the relevant criteria supports final approval of the settlement.

In deciding whether to grant final approval to a class action settlement, California courts consider several factors, including the following: (1) the value of the settlement; (2) the

⁷⁷ See *Manual*, § 21.634.

⁷⁸ See *Wershba*, *supra*, 91 Cal.App.4th at 244-45; *Dunk*, *supra*, 48 Cal.App.4th at 1801.

⁷⁹ Grover Decl. at ¶¶ 10-15, 42-45; Aiwazian Decl. at ¶¶ 3-5.

⁸⁰ Grover Decl. at ¶¶ 10-15, 42-45; Aiwazian Decl. at ¶¶ 3-5.

⁸¹ *Id.* at ¶ 15; Aiwazian Decl. at ¶¶ 5-6.

⁸² Simpluris Decl. at ¶¶ 12, 13; Grover Decl. at ¶¶ 28, 46.

⁸³ See *Dunk*, *supra*, 48 Cal.App.4th at 1802; *see also*, *Kullar*, *supra*, 168 Cal.App.4th at 129-30.

1 complexity, expense, and likely duration of the litigation in the absence of settlement; (3) the
2 extent of discovery completed and the stage of the proceedings when settlement was reached; (4)
3 the experience and views of class counsel; and (5) the reaction of class members.⁸⁴ As described
4 below, each of these criteria supports final approval of the settlement.

5 **a) The value of the settlement favors final approval.**

6 The settlement provides a good result for Class Members in terms of a cash settlement
7 payable in a single payment. The amounts to be paid are not nominal or symbolic.

8 With only one Class Member having opted out, 684 Participating Class Members will
9 receive Individual Settlement Payments from the Net Settlement Fund.⁸⁵ Each of the
10 Participating Class Members will receive, on average, a gross settlement payment of \$1,125.24.⁸⁶
11 This a substantial benefit in relation to the claimed harm and justifies the final approval of the
12 settlement.

13 **b) The risk, complexity, expense, and likely duration of continued**
14 **litigation weigh in favor of final approval.**

15 Courts also consider the risk, expense, and duration of the litigation in the absence of
16 settlement.⁸⁷ In applying this factor, a court should weigh the benefits of the settlement against
17 the expense and delay involved in achieving an equivalent or more favorable result at trial.⁸⁸

18 The risks of continued litigation are substantial. Of particular relevance to the proposed
19 settlement's reasonableness is the fact that Defendant has legal and factual grounds for defending
20 this action.⁸⁹ Defendant, for example, asserts that it has complied at all times with the California
21 Labor Code, the California Wage Orders, and all applicable California state law. Defendant
22 asserts that Class Members worked in the field largely without direct supervision and were thus
23

24 ⁸⁴ See *Wershba*, *supra*, 91 Cal.App.4th at 244-45; *Dunk*, *supra*, 48 Cal.App.4th at 1801.

25 ⁸⁵ Ex. 1 at ¶ 46(a); Simpluris Decl. at ¶ 14; Grover Decl. at ¶ 30.

26 ⁸⁶ Simpluris Decl. at ¶ 14; Grover Decl. at ¶¶ 30, 38.

27 ⁸⁷ See *Dunk*, *supra*, 48 Cal.App.4th at 1801; *Briseño v. Henderson* (9th Cir. 2021) 998 F.3d 1014,
1023-24.

28 ⁸⁸ See *Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433.

⁸⁹ Grover Decl. at ¶¶ 42-45; *see also*, Aiwazian Decl. at ¶ 6.

1 responsible for making sure they turned in accurate time sheets and took timely meal periods and
2 rest breaks. Defendant further asserts it paid Class Members for all time worked. Defendant also
3 asserts that it did not knowingly or willfully fail to provide compliant meal and rest breaks.
4 Defendant also points out that a level of willfulness is required to impose liability in connection
5 with the waiting time penalty claim and that Plaintiffs will not be able to establish willfulness. In
6 addition, Defendant argues that no Class Member suffered any damages related to the issuance of
7 wage statements and the Plaintiffs will be unable to prove that any Labor Code § 226(a) violation
8 was a “knowing and intentional failure,” a necessary element for the award of statutory damages
9 under Labor Code § 226(e).⁹⁰ Defendant argues that it had a clear expense reimbursement policy
10 and that it is an open question of law whether an employer is required to provide safety
11 footwear.⁹¹ Defendant also contended that Plaintiffs could not satisfy the criteria to certify a class
12 under Code of Civil Procedure § 382 and would lose a contested class certification motion.⁹²

13 Additionally, Defendant had embarked on a Pick Up Stix campaign in advance of the
14 mediation. Although Plaintiffs made efforts to attack the program, Defendant was permitted to
15 solicit release agreements. Before Defendant agreed to pause the campaign while the parties went
16 to mediation, 168 Class Members had signed purported releases. If no settlement was reached,
17 Defendant would have resumed the release campaign and undoubtedly would have obtained
18 additional releases. The settlement also provides additional compensation for the 168 Class
19 Members who signed releases.⁹³

22 ⁹⁰ See e.g., *Mays v. Wal-Mart Stores, Inc.* (9th Cir. 2020) 804 F. App’x 641, 644 (reversing class
23 certification of a wage statement class after concluding that the class representative’s receipt of a
24 pay stub with only a minor discrepancy in the employer’s name was not the type of injury-in-fact
25 required for Article III standing and, as a result, she could not represent the putative class);
26 *Roadrunner Intermodal Servs., Ltd. Liab. Co. v. T.G.S. Transp., Inc.* (E.D. Cal. Aug. 21, 2019)
No. 1:17-cv-01207-DAD-BAM, 2019 U.S. Dist. LEXIS 142321, at *50 (finding that the
employer’s error on a wage statement was unintentional and therefore it was not liable under
Labor Code § 226(e)).

27 ⁹¹ Grover Decl. at ¶ 42.

28 ⁹² Grover Decl. at ¶ 44; Aiwarzian Decl. at ¶ 6.

⁹³ Grover Decl. at ¶¶ 44, 72.

Employment class actions are expensive and time-consuming to prosecute. Continued litigation of this action against Defendant would likely be complex and expensive due to the nature of the claims. Plaintiffs faced significant uncertainty and risk, both in not prevailing on the merits and in non-certification, as explained above. In contrast, the settlement ensures timely relief and a substantial and risk-free recovery for the settlement Class.

Further, if the Court were to deny the class certification motion, Class Members would be left without a group remedy for their claims. The other issues presented here would need to be litigated individually in Superior Courts in a piecemeal, costly, and time-consuming fashion.

c) Disclosure of documents and data demonstrating the strengths and weaknesses of this action was completed prior to entering into the settlement.

The extent of discovery that has been completed and the stage of the litigation are factors that courts consider in determining the fairness of a settlement.⁹⁴ As noted above, formal and informal discovery took place between the Parties in which Defendant and Plaintiffs exchanged a considerable amount of relevant information.⁹⁵ The information exchanged through formal and informal discovery enabled Plaintiffs to evaluate the strengths, weaknesses and risks of the class claims and defenses and to negotiate a fair, reasonable, and adequate settlement.⁹⁶

d) The experience and views of counsel favors final approval.

Class Counsel supports the settlement as fair, adequate, reasonable, and in the best interests of the Class as a whole.⁹⁷ The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight.⁹⁸

e) Class Members' positive reaction to the settlement favors final approval.

Finally, courts look at the reaction of class members to determine if a settlement that

⁹⁴ See *Dunk, supra*, 48 Cal.App.4th at 1801.

⁹⁵ Grover Decl. at ¶¶ 11-15; Aiwazian Decl. at ¶¶ 3-5.

⁹⁶ *Id.* at ¶¶ 11-15, 41-45; Aiwazian Decl. at ¶¶ 3-6, 21.

⁹⁷ Grover Decl. at ¶¶ 31-46; Declaration of Raul Perez of Capstone Law APC ("Perez Decl.") at ¶ 6; Aiwazian Decl. at ¶¶ 3-6, 21.

⁹⁸ See *Dunk, supra*, 48 Cal.App.4th at 1802; *In re Omnivision Techs.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1043 ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." (internal quotations and citation omitted)).

1 directly affects their interests should be approved as fair, adequate, and reasonable. Of great
2 importance is the fact that no Class Member has objected to and only one opted-out of the
3 Settlement.⁹⁹ In light of such a positive reaction by the Class Members, the Court should
4 construe the overwhelming non-opposition to the settlement as a strong indication of the Class
5 Members' support for the settlement as fair, adequate, and reasonable.

6 4. The Settlement Class meets all of the requirements for certification for
7 settlement purposes under Code of Civil Procedure § 382.

8 The proposed settlement class meets all requirements for certification of a settlement
9 class, as summarized below.

10 a) **The proposed Settlement Class is ascertainable and too**
11 **numerous to make joinder practicable.**

12 The proposed Settlement Class is ascertainable. The Class definition, the total size and
13 the means for identifying the members of the Class determine whether the Class is ascertainable.
14 In this case, the members of the proposed settlement Class are identifiable from Defendant's
15 records.¹⁰⁰ The settlement Class is comprised of 685 current and former employees of
16 Defendant.¹⁰¹

17 b) **Questions of law and fact common to Class Members**
18 **predominate.**

19 Here, the Class Members' claims all stem from a common set of circumstances. Plaintiffs
20 contend that all Class Members worked as field workers for Defendant at its client sites
21 throughout California and were subject to Defendant's uniform practices and policies, including
22 those regarding compensation for unpaid off the clock time, meal periods, rest breaks, and
23 unreimbursed expenses. Those uniform policies and practices are at the core of Plaintiffs'
24 allegations that Defendant violated the Labor Code and create questions of law and fact common
25 to all Class Members. All Class Members seek the same legal remedies under the same state
26 laws.¹⁰²

26 ⁹⁹ Simpluris Decl. at ¶¶ 12, 13 Grover Decl. at ¶ 46.

27 ¹⁰⁰ Simpluris Decl. at ¶ 6; *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274.

28 ¹⁰¹ See Grover Decl. at ¶ 50; Simpluris Decl. at ¶ 6.

¹⁰² Grover Decl. at ¶ 51.

Furthermore, the common questions regarding Defendant's off the clock pay, meal period, rest break, and expense reimbursement policies and practices are among the key issues that will determine Defendant's alleged liability to the proposed settlement Class. Plaintiffs contend that common questions will predominate over any individual questions that may arise. Under these circumstances, the requirements that common questions of law and/or fact exist among the proposed Class Members and will predominate over individual questions are satisfied for purposes of certifying the proposed Class for settlement.¹⁰³

c) The proposed Class Representatives' claims are typical of the Class Members' claims.

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory.¹⁰⁴ In this case, the named Plaintiffs contend that they, like all of the Class Members, worked for Defendant in California as an hourly, non-exempt employees and were subject to Defendant's uniform policies and practices regarding off the clock pay, meal periods, rest breaks, and unreimbursed expenses. Thus, Plaintiffs' claims and the Class Members' claims arise from the same course of conduct.¹⁰⁵

d) The proposed Class Representatives will adequately represent the Class.

The named Plaintiffs also have demonstrated that they will aggressively and competently assert the Class Members' interests. Plaintiffs have retained competent counsel, experienced in litigating class action claims in the wage and hour context.¹⁰⁶

e) Class treatment is superior to individual trials.

For purposes of settlement only, the Parties have agreed that certification of the Settlement Class is appropriate. The only alternative to certifying a case like this for settlement purposes or otherwise as a class action would be to force hundreds of individuals to file

¹⁰³ Grover Decl. at ¶ 515.

¹⁰⁴ *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.

¹⁰⁵ Grover Decl. at ¶ 52.

¹⁰⁶ See Grover Decl. at ¶¶ 2-4, 53, 59, 61-63, 73; Perez Decl. at ¶¶ 7-15, Ex. 1; Aiwazian Decl. at ¶¶ 13-18.

individual actions. As the Supreme Court has stated, “[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate some individualized inquiries and the absence of any remedial proceeding whatsoever.”¹⁰⁷ Here, proceeding with 685 trials would likely require this and other courts to hear similar testimony regarding Defendant’s alleged off the clock pay, meal periods, rest break and expense reimbursement practices over and over again. The inefficiency and resulting inconsistent judgments that could result from numerous individual trials would warrant certifying this case as a class action.

C. The PAGA settlement warrants approval.

Labor Code § 2699(l)(2) requires that the Court review and approve any PAGA settlement. Class action requirements do not apply to PAGA actions.¹⁰⁸ For all of the reasons stated above, the Settlement is fair, reasonable and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay \$100,000 to settle the PAGA penalty claims, of which a payment of \$75,000 will go to the LWDA for education and enforcement purposes.¹⁰⁹

The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.¹¹⁰ In *Nordstrom Com’n Cases*, the state appellate court held that the court can approve a settlement even when the parties did not allocate any dollars to the PAGA claims.¹¹¹ Here, Plaintiffs believe that the agreed upon allocation between PAGA and direct Class Member payments is appropriate and request that the Court approve this portion of the Settlement.

“PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”¹¹² To offer as much information as reasonably possible,

¹⁰⁷ *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339, fn. 10.

¹⁰⁸ *Arias v. Superior Court* (2009) 46 Cal.4th 969, 974.

¹⁰⁹ Ex. 1 at ¶¶ 20, 42, 45; Lab. Code § 2699(i).

¹¹⁰ *Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589.

¹¹¹ *Id.*

¹¹² See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 (“PAGA has no notice
(Cont’d)

the Parties agreed to provide individualized information in the Notice regarding each PAGA Member's estimated individual PAGA payment.¹¹³ If the Court grants final approval of the Settlement, all of the PAGA Members will receive individual PAGA payments.¹¹⁴

Plaintiffs therefore seek the Court's approval of the PAGA portion of the Settlement, including the \$100,000 PAGA Settlement Payment, the distribution plan for the PAGA Settlement Payment, and the PAGA Release.¹¹⁵

VI. CONCLUSION

For all of the foregoing reasons, Plaintiffs request that the Court grant final approval of this settlement. A [Proposed] Order Granting Motions for Final Approval and for Award of Reasonable Attorneys' Fees and Costs, Class Representative Enhancement Payments, and Settlement Administration Fees is submitted herewith.

Respectfully submitted,

Dated: June 1, 2023

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT W. SPENCER

Attorneys for Plaintiffs and Co-Class Counsel

requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same).

¹¹³ See Simpluris Decl., Ex. A; Ex. 1 at ¶¶ 13, 30, 42, 46(b).

¹¹⁴ Ex. 1 at ¶¶ 13, 46(b); see also, ¶ 43.

¹¹⁵ Ex. 1 at ¶¶ 18, 20, 42., 45, 46(b).

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **June 1, 2023** in the case of *Cascade Drilling Wage and Hour Cases*, Alameda County Superior Court, Case Number RG21090743, I served the foregoing document(s):

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested party(ies) below, using the following means:

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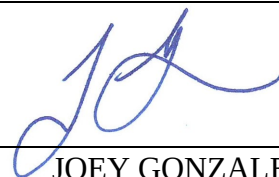
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| ☒ | (BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties. |
| ☒ | (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. |


JOEY GONZALEZ