

ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com

KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiffs
EUGENE MARTINEZ and ROBERT WILLIAMS

Additional Counsel on following Page

**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: JCCP 5215

ASSIGNED FOR ALL PURPOSES TO
JUDGE STEPHEN KAUS, DEPARTMENT 19

CLASS & REPRESENTATIVE ACTION

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PRIVATE
ATTORNEY GENERAL ACT
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Time: 3:00 pm
Date: January 9, 2023
Dept: 19

Reservation No: 218655095643

1 ROBERT DREXLER (SBN 119119)
2 robert.drexler@capstonelawyers.com
3 MOLLY DeSARIO (SBN 230763)
4 molly.desario@capstonelawyers.com
5 HELGA HAKIMI (SBN 257381)
6 helga.hakimi@capstonelawyers.com
7 JONATHAN LEE (SBN 267146)
8 jonathan.lee@capstonelawyers.com

CAPSTONE LAW APC

1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiffs
EUGENE MARTINEZ and ROBERT WILLIAMS

EDWIN AIWAZIAN (SBN 232943)
edwin@calljustice.com
JOANNA GHOSH (SBN 272479)
joanna@calljustice.com

LAWYERS FOR JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021

Attorneys for Plaintiff
JOHN LILLA

PLEASE TAKE NOTICE THAT on January 9, 2023, at 3:00 p.m. or as soon thereafter as the matter may be heard, in Department 19 of the above-entitled Court, located at 1221 Oak Street, Oakland, 4th Floor, California 94612, Plaintiffs Eugene Martinez, Robert Williams and Jonathan Lilla (collectively “Plaintiffs”) will and hereby do move for an Order (1) preliminarily approving the proposed class action settlement in the above-captioned case, (2) provisionally certifying the settlement class, (3) approving the appointment of class counsel, class representatives, and a settlement administrator, (4) approving and directing distribution of the Notice of Class Action Settlement to the settlement class, and (5) setting a final fairness and approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a class action. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and that the procedures proposed are adequate to ensure the opportunity of the proposed Settlement Class Members to participate in, opt out of, or object to the settlement.

This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Stipulation of Class Action and Private Attorney General Act Settlement and Release, the Declarations of Eric A. Grover, Robert Spencer, Joanna Ghosh, and Raul Perez, and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Respectfully submitted,

Dated: November 30, 2022

KELLER GROVER LLP

By: 
ERIC A. GROVER
ROBERT W. SPENCER
Attorneys for Plaintiffs and Proposed Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This coordinated proceeding includes two putative class actions against Cascade Drilling, L.P. (“Defendant” or “Cascade”) brought by Plaintiffs Eugene Martinez and Robert Williams (“Martinez Plaintiffs”) and Plaintiff Jonathan Lilla (collectively, “Plaintiffs” or “Class Representatives”), on behalf of themselves and proposed classes of current and former hourly employees who worked for Defendant at client sites in California.¹ Plaintiffs’ primary allegations are that Defendant failed to: (i) pay Class Members for all compensable time worked; (ii) provide meal periods and rest breaks in the manner and at intervals legally required; (iii) provide accurate, itemized wage statements; and (iii) pay all wages due upon termination. Plaintiffs seek recovery of unpaid wages, statutory damages, waiting time penalties, unreimbursed business expenses, interest, and attorneys’ fees and costs on behalf of the putative class, asserting that Defendant violated various provisions of the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*² The Martinez Plaintiffs also alleged that Defendant violated the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”), and seek PAGA penalties on behalf of all aggrieved employee and California’s Labor and Workforce Development Agency (“LWDA”).³

Plaintiffs now seek the Court’s preliminary approval of a proposed class settlement in both actions, the terms of which are set forth in the Plaintiffs’ and Defendant’s (collectively the “Parties”) Stipulation of Class Action and Private Attorney General Act Settlement and Release (“Stipulation”).⁴ The Stipulation was reached after hard-fought litigation, during which the

¹ *Martinez, et al. v. Cascade Drilling, L.P.*, Alameda County Superior Court Case No. RG21090743. (“Martinez”), filed on March 3, 2021; *Lilla v. Cascade Drilling, L.P.*, Contra Costa County Superior Court Case No. C-21 01568, filed on July 29, 2021 (“Lilla”). *Martinez* and *Lilla* are referred to collectively as the “Actions.”

² Declaration of Eric A. Grover submitted herewith at ¶¶ 6-7, Ex. 2 (the operative *Martinez* First Amended Complaint); Ex. 3 (the operative *Lilla* Complaint). Hereinafter, all “Ex.” references are to the exhibits attached to the Grover Declaration.

³ Ex. 2.

⁴ Ex. 1 (the Stipulation).

1 Parties exchanged formal discovery and engaged in motion practice.⁵ Earlier this year, the
2 Parties participated in formal joint mediation with Jill R. Sperber, Esq., a well-respected mediator
3 experienced in wage and hour class actions.⁶ The Parties exchanged additional information prior
4 to the mediation to enable productive discussions.⁷ To reach a settlement, the Parties engaged in
5 arm's-length settlement negotiations through their experienced counsel at mediation.⁸

6 The settlement represents a good result for the Class Members. If no Class Member opts
7 out, the settlement will result in an average gross payment of approximately \$1,107.39 to those
8 Class Members who do not opt out of the settlement, on terms that Plaintiffs believe to be fair,
9 reasonable and adequate.⁹ To settle the matter, Defendant is required to make a non-reversionary
10 payment of \$1,468,000, which is in addition to \$132,000 Defendant previously paid in individual
11 settlement payments, resulting in a total payment of \$1,600,000, referred to as the Gross
12 Settlement Amount ("GSA"), plus the employer's share of the payroll taxes.¹⁰

13 The settlement also provides that Plaintiffs' representative PAGA claims will be settled
14 for \$100,000, referred to as the PAGA Settlement Amount.¹¹ As Labor Code § 2699(i) requires,
15 the PAGA Settlement Amount will be distributed 75% (\$75,000) to the California Labor and
16 Workforce Development Agency ("LWDA") and 25% (\$25,000) to Aggrieved Employees.¹²
17 Settlement Class Members who also are Aggrieved Employees will receive a proportion of the
18 \$25,000 allocated to Aggrieved Employees in addition to the Individual Settlement Payment,
19 combined in one settlement check.¹³

20 For the foregoing reasons, Plaintiffs respectfully request that the Court take the following
21

22 ⁵ Grover Decl. at ¶¶ 10-12, *see also*, ¶ 8.

23 ⁶ Grover Decl. at ¶¶ 11-12.

24 ⁷ Grover Decl. at ¶ 11.

25 ⁸ Grover Decl. at ¶ 12.

26 ⁹ *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02; Grover Decl. at ¶¶ 16-38.

27 ¹⁰ Ex. 1 at ¶¶ 12, 37-38; Grover Decl. at ¶ 21.

28 ¹¹ Ex. 1 at ¶¶ 18-20, 42, 45. *See* Lab. Code § 2699(l)(2).

¹² Ex. 1 at ¶¶ 20, 42.

¹³ Ex. 1 at ¶ 46.

actions solely for the purposes of settlement: (a) grant preliminary approval of the Stipulation, (b) conditionally grant certification of the proposed settlement class, (c) appoint Eugene Martinez, Robert Williams and Jonathan Lilla as Class Representatives, (d) appoint means Keller Grover LLP, Capstone Law APC, and Lawyers for Justice, P.C. as Class Counsel, (e) approve the appointment of Simpluris, Inc. as the Settlement Administrator, (f) authorize the mailing of the proposed class action notice, and (g) schedule a final fairness and approval hearing.

II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS

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

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

¹⁴ Grover Decl. at ¶ 6.

records, in violation of § 1174.¹⁵ The Alameda Superior Court issued an order coordinating the *Martinez* and *Lilla* actions on April 19, 2022.¹⁶

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.¹⁷

The Parties have engaged in formal discovery in which both Parties produced documents and exchanged written discovery responses.¹⁸ During the discovery process, and after Defendant obtained 179 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 an estimated 686 Class Members.
- o There are an estimated 46,826 total Workweeks
- o There are an estimated 29,188 Qualifying Workweeks, *i.e.*, total Workweeks less the weeks worked by members of the Pick Up Stix Settlement Group
- o There are an estimated 17,646 weeks worked by the members of the Pick Up Stix Settlement Group covered by the settlement agreements with those individuals

(B) The number of PAGA Members:

- o There are approximately 258 PAGA Members.
- o Aggrieved Employees worked a total of approximately 13,167 Qualified Pay Periods during the PAGA liability period.

¹⁵ Ex. 3; Grover Decl. at ¶ 7.

¹⁶ Grover Decl. at ¶ 8.

¹⁷ Grover Decl. at ¶ 9.

¹⁸ Grover Decl. at ¶ 10.

(C) 179 Class Members signed releases of their claims in the *Martinez* and *Lilla* actions.¹⁹

o Defendant paid \$132,000 to the Pick Up Stix Settlement Group.²⁰

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.²¹ The Parties reached a tentative agreement to resolve the matter at the mediation, subject to the Court’s approval.²² All terms of the Parties’ settlement are set forth in the Stipulation.²³

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class

The Parties agreed that, for purposes of settlement only, 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, 2022.²⁴

The Class Period is September 6, 2016 through June 30, 2022, inclusive.²⁵ In this memorandum, the members of the Settlement Class also are referred to collectively as the “Class Members.” Defendant represents that there are approximately 686 Class Members.²⁶

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, 2022.²⁷

¹⁹ 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.

²⁰ Grover Decl. at ¶ 11.

²¹ Grover Decl. at ¶ 12.

²² Grover Decl. at ¶ 12.

²³ Grover Decl. at ¶ 12; Ex. 1.

²⁴ Ex. 1 at ¶ 5.

²⁵ Ex. 1 at ¶ 6.

²⁶ Ex. 1 at ¶ 5.

²⁷ Ex. 1 at ¶ 18.

1 The PAGA Period is from February 4, 2020 through June 30, 2022, inclusive.²⁸ Defendant
2 represents that there are approximately 258 PAGA Members.²⁹

3 The Pick Up Stix Settlement Group is defined as “those Participating Class Members who
4 signed a release of claims asserted in” the Actions.³⁰ Participating Class Members are those
5 Settlement Class Members who do not opt out of the settlement

6 **B. Notice Procedure and Settlement Process**

7 The proposed Notice of Class Action Settlement (“Notice”) explains in plain language the
8 nature of the lawsuit, terms of the settlement, Class Members’ rights, the expected settlement
9 payment that each Class Member can expect to receive, the steps necessary for a Class Member to
10 dispute the information used to calculate his or her settlement payment, and the steps necessary to
11 request exclusion from or object to the settlement.³¹

12 “PAGA has no notice requirements for unnamed aggrieved employees, nor may such
13 employees opt out of a PAGA action.”³² Even so, the Notice will inform Settlement Class
14 Members and PAGA Members of the PAGA Settlement and each Class Member’s and PAGA
15 Member’s estimated Individual Settlement Payment and the formula for calculating Individual
16 Settlement Payments.³³

17 The Parties agreed upon a notice procedure that is intended to ensure the highest number
18 of Class Members receive the Notice. Simpluris, Inc. (“Simpluris” or the “Settlement
19 Administrator”), the company that the Parties selected to handle the notice and settlement
20 administration, will mail the Notice to Class Members based on contact information Defendant
21 will provide from its records.³⁴ In the event any Notices are returned by the post office as
22 undeliverable, the proposed notice procedure requires Simpluris to perform reasonable searches

23 _____
24 ²⁸ Ex. 1 at ¶ 19.

25 ²⁹ Ex. 1 at ¶ 18.

26 ³⁰ Ex. 1 at ¶ 23.

27 ³¹ Ex. 1 at ¶¶ 16, 52, Stipulation Exhibit A.

28 ³² *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.

³³ Ex. 1 at ¶¶ 16, 52, Stipulation Exhibit A.

³⁴ Ex. 1 at ¶¶ 49-52.

1 to attempt to locate Class Members' correct addresses.³⁵

2 The settlement provides all Class Members with the opportunity to request exclusion from
3 the settlement or object to the settlement terms.³⁶ Class Members will have 45 calendar days
4 from the date the Settlement Administrator mails the Notices to opt out or object.³⁷

5 Class Members are not required to submit a claim in order to participate in the settlement
6 and receive a settlement payment.³⁸ The Notices also will state the Settlement Administrator's
7 calculation of each Class Member's estimated gross Individual Settlement Payment if that Class
8 Member does not request exclusion from the Settlement and each PAGA Member's estimated
9 share of the PAGA Fund. The Notices will be individualized to state the number of Qualifying
10 Workweeks that each Class Member worked.³⁹ Class Members will have 45 days from the date
11 the Settlement Administrator mails the Notices to dispute the number of Qualifying Workweeks
12 stated on his or her individualized Notice.⁴⁰

13 **C. Benefits to the Class**

14 Plaintiffs believe the settlement provides fair and adequate benefits for the Class
15 Members. Although the maximum theoretical damages of the remaining claims exceed the Net
16 Settlement Amount by a substantial amount, the defenses to those claims discussed in the Grover
17 declaration warrant a substantial discount.⁴¹ Defendant also asserts that Plaintiffs will not
18 succeed at class certification because individualized questions regarding each Class Member's off
19 the clock time, meal periods and rest breaks will predominate.⁴² Perhaps more importantly here,
20 Defendant had embarked on an aggressive program to obtain low-value individual settlements
21 and was poised to continue that effort if a settlement had not been reached at mediation.⁴³

22 ³⁵ Ex. 1 at ¶ 51.

23 ³⁶ Ex. 1 at ¶¶ 55, 59; see ¶¶ 32, 52, Stipulation Exhibit A.

24 ³⁷ Ex. 1 at ¶ 33.

25 ³⁸ See Ex. 1 at ¶¶ 14, 22, 26; Grover Decl. at ¶ 26.

26 ³⁹ Ex. 1 at ¶ 52.

27 ⁴⁰ Ex. 1 at ¶¶ 33, 53.

28 ⁴¹ Grover Decl. at ¶¶ 17-20, 30, 36-38.

⁴² Grover Decl. at ¶ 19.

⁴³ Grover Decl. at ¶ 17.

Taking those factors into account, Class Counsel believes the proposed allocations of the Net Settlement Fund (“NSF”) to be fair and reasonable and a good compromise for the damages of absent Class Members.⁴⁴ The settlement provides for a Gross Settlement Amount (“GSA”) of \$1,600,000 (made up of \$1,468,000 in new money in addition to the \$132,000 already paid to the Pick Up Stix Settlement Group), plus the employer-side payroll taxes, to resolve the claims covered by the settlement.⁴⁵ After subtracting out the amounts allocated to pay the costs of administration (up to \$20,000), 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 Representative’s Service Award (up to \$30,000 combined), the PAGA Settlement Amount (\$100,000), the Pick Up Stix Payment (\$132,000), all of which are subject to the Court’s approval, the NSF is estimated to be \$759,667.⁴⁶ The NSF will be distributed to all Participating Class Members, *i.e.*, all Class Members who do not timely opt out, based on the formula set forth in the Stipulation and summarized below.⁴⁷ There is no reversion of the NSF to Defendant.⁴⁸

D. Payments to the Participating Class Members

The Stipulation provides that NSF will be distributed proportionally based on the number of Qualifying Workweeks each Class Member worked during the Class Period.⁴⁹ 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 Workweeks⁵⁰ 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

⁴⁴ Grover Decl. at ¶¶ 16-38.

⁴⁵ Grover Decl. at ¶ 21.

⁴⁶ Ex. 1 at ¶¶ 14, 38-42; Grover Decl. at ¶ 22.

⁴⁷ Ex. 1 at ¶¶ 44, 46, *see also*, ¶ 14; Grover Decl. at ¶ 22.

⁴⁸ Ex. 1 at ¶ 44.

⁴⁹ Ex. 1 at ¶ 46(a).

⁵⁰ “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.

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 set forth in the Stipulation, including employee-side tax withholdings or deductions. Settlement Class Members are not required to submit a claim to receive an Individual Settlement Payment.⁵¹

If no Class Member opts out, the average Individual Settlement Payment would be approximately \$1,107.39 (\$759,667 NSF/686 Class Members).⁵²

E. Payment to the Aggrieved Employees and the State

The Parties have agreed to allocate \$100,000 of the GSA to settle the PAGA claims, referred to as the PAGA Settlement Amount.⁵³ Labor Code § 2699(i) requires that the LWDA receive 75% (\$75,000) of the PAGA settlement amount and Aggrieved Employees receive 25% (\$25,000).⁵⁴

To distribute the 25% allocated to the Aggrieved Employees, the Settlement Administrator will distribute payments from the PAGA Fund according to the formula set forth in the Stipulation.⁵⁵ The Settlement Administrator will divide the PAGA Fund by the aggregate total number of Qualifying Workweeks, resulting in the "PAGA Workweek Value." Each PAGA Member's Individual Settlement Payment from the PAGA Fund will be calculated by multiplying each individual PAGA Member's total number of Qualifying Workweeks by the PAGA Workweek Value. All PAGA Member shall be credited with at least one Qualifying Workweek during the PAGA Period. The entire PAGA Fund will be disbursed to all PAGA Members.⁵⁶

⁵¹ Ex. 1 at ¶ 46(a), *see* ¶ 13.

⁵² Grover Decl. at ¶ 27.

⁵³ Lab. Code § 2699(f); Ex. 1 at ¶¶ 20, 42.

⁵⁴ Lab. Code § 2699(i).

⁵⁵ Ex. 1 at ¶¶ 20, 45, 46(b).

⁵⁶ Ex. 1 at ¶ 46(b).

F. The scope of Release applicable to Settlement Class Members.

The scope of the Release provision is narrowly tailored to the claims asserted in the operative *Martinez* First Amended Complaint and *Lilla* Complaint filed in the Actions and factual or legal theories that reasonably could have been alleged based on the facts and legal theories contained in those complaints.⁵⁷ The release is also temporally limited. The Release period is from September 6, 2016 through June 30, 2022, inclusive.⁵⁸

G. The scope of the PAGA release.

The settlement provides a separate PAGA Release for each of the Released PAGA Claims during the PAGA Period. The “Released PAGA Claims” means all claims for civil penalties under California Labor Code §§ 2698, *et seq.*, that were brought or which could have been brought based on the facts alleged in Plaintiffs’ LWDA Letter during the PAGA Period.⁵⁹

H. The Class Representatives’ Enhancement Payments.

The Stipulation provides for a reasonable enhancement for the named Plaintiffs to compensate them for the risks they took and the time and effort they expended in coming forward to provide invaluable information in support of the claims alleged in the operative complaints.⁶⁰ Plaintiffs also will provide a general release of their claims against Defendant that is much broader than the Limited Release that will apply to the Settlement Class Members.⁶¹

Subject to the Court’s approval, the settlement provides that Plaintiffs Martinez, Williams and Lilla each will receive a \$10,000 Class Representative Enhancement Payment.⁶² This service award is slightly more than one-half of one percent of the overall settlement amount.⁶³ The settlement provides that any amount allocated to the service award that the Court does not

⁵⁷ Ex. 1 at ¶¶ 29, 57; *see* Ex. 2 (*Martinez* FAC); Ex. 3 (*Lilla* Complaint); Grover Decl. at ¶ 31.

⁵⁸ Ex. 1 at ¶ 57, *see* ¶ 6.

⁵⁹ Ex. 1 at ¶ 58, *see also*, ¶¶ 17, 19, 30; Grover Decl. at ¶ 32.

⁶⁰ Ex. 1 at ¶ 40; Grover Decl. at ¶ 33.

⁶¹ Ex. 1 at ¶¶ 7, 40, 73.

⁶² Ex. 1 at ¶ 40.

⁶³ *See* Ex. 1 at ¶¶ 7, 12, 40.

1 approve will become part of the NSF.⁶⁴ With the application for final approval, Plaintiffs will
2 submit declarations detailing the time and effort each put into this case.⁶⁵

3 **I. Attorneys' fees and costs.**

4 The Stipulation also provides that, at final approval, Class Counsel will seek an award of
5 attorneys' fees not to exceed one-third (33.33%) of the GSA, *i.e.*, \$533,333 of the \$1,600,000
6 GSA, and actual costs, which are estimated not to exceed \$25,000, referred to collectively as the
7 Attorneys' Fees and Costs.⁶⁶ The fee request of 33.33% of the GSA is reasonable given the time
8 invested in litigating this case and the amount that will be paid to nearly 700 Class Members.
9 With the final application, Class Counsel will provide information regarding the hours they have
10 spent litigating this case.⁶⁷ The settlement provides that any amount allocated to the Attorneys'
11 Fees and Costs that the Court does not approve will become part of the NSF.⁶⁸

12 **J. Administration costs.**

13 The Stipulation allocates \$20,000 of the GSA for the costs of settlement administration,
14 subject to the Court's approval.⁶⁹

15 **K. Residual funds.**

16 Individual Settlement Payment checks issued to Settlement Class Members will be valid
17 for 180 days from the date of issuance.⁷⁰ The settlement provides that, after that time period, any
18 funds represented by undeliverable or uncashed checks issuance will be tendered to Worksafe.⁷¹
19 Worksafe is a California-based organization dedicated to promoting and protecting the basic right
20 of all people to a safe and healthy workplace.⁷² The Parties agree that this results in no unpaid
21

22 ⁶⁴ See Ex. 1 at ¶¶ 14, 40.

23 ⁶⁵ Grover Decl. at ¶ 45.

24 ⁶⁶ Ex. 1 at ¶ 39.

25 ⁶⁷ Grover Decl. at ¶ 51.

26 ⁶⁸ Ex. 1 at ¶ 39.

27 ⁶⁹ Ex. 1 at ¶ 41.

28 ⁷⁰ Ex. 1 at ¶ 62.

⁷¹ Ex. 1 at ¶ 62.

⁷² See Worksafe's website: <https://worksafe.org/>.

residual under California Civil Procedure Code § 384, as the entire NSF will be paid out to the Settlement Class Members.⁷³

L. Notice of the PAGA settlement to the LWDA.

Because the Parties have agreed to settle the PAGA claims in this action, proposed Class Counsel has sent Plaintiffs' motion for preliminary approval, this memorandum, the Grover Declaration, with its exhibits including the Stipulation, the Declaration of Robert Spencer and the proposed order to the LWDA.⁷⁴

M. Tax treatment.

The Stipulation provides that all individual settlement payments to Settlement Class Members shall be designated as 25% wages and 75% non-wage income (*i.e.*, penalties and interest).⁷⁵ Individual Settlement Payments from the PAGA Fund are allocated 100% as non-wages. Defendant shall be responsible for paying the employer's share of payroll taxes (above and beyond the GSA).⁷⁶ The Settlement Administrator shall be responsible for timely issuing any required tax documents to Class Members.⁷⁷

N. Overlapping cases.

There are no known additional related pending cases that this settlement will affect.⁷⁸

IV. LEGAL ANALYSIS

A. Two-step approval process.

Any settlement of class litigation must be reviewed and approved by the Court.⁷⁹ This is

⁷³ Grover Decl. at ¶ 46.

⁷⁴ See Declaration of Robert Spencer filed with Plaintiffs' motion for preliminary approval; see also, Grover Decl. at ¶ 48.

⁷⁵ Ex. 1 at ¶ 64.

⁷⁶ Ex. 1 at ¶ 37; Grover Decl. at ¶ 49.

⁷⁷ Ex. 1 at ¶ 65.

⁷⁸ Grover Decl. at ¶ 47.

⁷⁹ Cal. Rules of Court 3.769; Fed. R. Civ. Pro. 23(e). The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.⁸⁰

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.”⁸¹

The procedures for the submission of a proposed settlement for preliminary approval by the court also are discussed in 4 Newberg on Class Actions:

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint Stipulation, which is submitted to the court for preliminary approval. The stipulation should set forth the essential terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.⁸²

⁸⁰ The Manual for Complex Litigation (Third).

⁸¹ 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

⁸² 4 Newberg on Class Actions at § 11.24.

Here, the Parties have reached such an agreement, which Plaintiffs now submit to this Court, in connection with this Motion. The Stipulation sets forth all terms of the agreement reached by the Parties.⁸³

B. Procedures for Settlement Before Class Certification

Pursuant to Cal. Rules of Court 3.769, the parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”⁸⁴

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal . . . may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel’s application for fees and expenses.⁸⁵

Each such condition is appropriate here (although, as mentioned, the Parties do not hereby seek final approval of the award to proposed Class Counsel, which will be addressed at the final approval stage).

1. The proposed Class should be certified solely for settlement purposes.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class.⁸⁶ The reason for this is that no trial is anticipated in a settlement class, so the case management issues inherent in

⁸³ See Ex. 1.

⁸⁴ *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244, *overruled on other grounds* by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 269; *accord Dunk, supra*, 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable.”); *see also, In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”).

⁸⁵ 4 *Newberg on Class Actions*, at § 11.26.

⁸⁶ *Dunk, supra*, 48 Cal. App. 4th at 1807, n. 19.

determining if the class should be certified need not be confronted.⁸⁷ The proposed settlement class meets all requirements for certification of a settlement class, as discussed below.

a) The proposed settlement Class is ascertainable and too numerous to make joinder practicable.

The proposed Settlement Class is ascertainable. The class definition, the total class size of and the means for identifying the Class Members determine whether the Class is ascertainable. Here, the members of the proposed Settlement Class are identifiable from Defendant's records.⁸⁸

Further, the size of the proposed Settlement Class is sufficiently numerous to warrant certification. According to Defendant's records, there are approximately 686 proposed Settlement Class.⁸⁹

b) Questions of law and fact common to members of the settlement Class predominate.

The proposed Class Members' claims all stem from a common set of circumstances. All of the Class Members worked for Defendant in California during the relevant time period. Plaintiffs contend that all Class Members worked as field workers for Defendant at its client sites throughout California and were subject to Defendant's uniform practices and policies, including those regarding compensation for unpaid off the clock time, meal periods, rest breaks, and unreimbursed expenses. Those uniform off the clock pay policies and practices and meal period and rest break policies and practices are at the core of Plaintiffs' allegations that Defendant violated the Labor Code and create questions of law and fact common to all Class Members. All Class Members seek the same legal remedies under the same state laws.⁹⁰

Furthermore, the common questions regarding Defendant's off the clock pay, meal period and rest break 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

⁸⁷ *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620.

⁸⁸ *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274.

⁸⁹ Ex. 1 at ¶ 5; see Grover Decl. at ¶¶ 11, 41.

⁹⁰ Grover Decl. at ¶ 42.

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.⁹¹

c) The Proposed Class Representatives' Claims are typical of the Class' 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.⁹² In this case, the named Plaintiffs contend that they, like all of the Class Members, worked for Defendant as field workers at client sites in California and were subject to Defendant's uniform policies and practices regarding compensation for off the clock time, meal periods, rest breaks and unreimbursed expenses. Thus, Plaintiffs' claims and the Class Members' claims arise from the same course of conduct.⁹³

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, including those in which collective bargaining agreements are at issue.⁹⁴ Thus, the Court should conditionally certify the proposed Class solely for settlement purposes.

C. The settlement is fair and reasonable and not the result of fraud or collusion.

"The trial court operates under a presumption of fairness when the settlement is the result of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and the court to act intelligently, counsel are experienced in similar litigation, and the percentage of objectors is small."⁹⁵

⁹¹ Grover Decl. at ¶ 42.

⁹² *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.

⁹³ Grover Decl. at ¶ 43.

⁹⁴ See Grover Decl. at ¶¶ 2-4, 16, 44; Declaration of Raul Perez at ¶¶ 6-15 and Ex. 1.

⁹⁵ *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, citing *Dunk, supra*, 48 Cal. App. (Cont'd)

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, such counsel have been involved in discovery and negotiations, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence with the opposing party.⁹⁶ Here, both Plaintiffs' and Defendant's counsel have a great deal of experience in wage and hour matters and class action litigation.⁹⁷ Moreover, both class counsel and defense counsel conducted an extensive investigation of the factual allegations involved in this case. The Parties have engaged in formal discovery, exchanging relevant documents, records, written responses and other information necessary to evaluate the strengths and weaknesses of the case. Each side has apprised the other of its respective factual contentions, legal theories and defenses, resulting in extensive arm's-length negotiations taking place between the Parties.⁹⁸

Plaintiffs believe the settlement for each Class Member to be fair, reasonable and adequate, given the inherent risk of litigation and the costs of pursuing such litigation.⁹⁹ The settlement shall finally resolve all claims arising out of or related to, among other claims, missed meal period and rest break claims, unpaid wage claims, and Business & Professions Code §§ 17200, *et seq.* claims, as well as costs and attorneys' fees.¹⁰⁰ The settlement also finally resolves any and all PAGA claims for civil penalties, attorneys' fees, and litigation costs during the PAGA Period.¹⁰¹

The settlement also compensates each of the named Plaintiffs with a reasonable

4th at 1800-01, which cited *Officers for Justice v. Civil Service Com'n*, (9th Cir. 1982) 688 F.2d 615, 625. *See also, e.g., Wershba*, 91 Cal.App.4th at 245 (similar).

⁹⁶ *See Newberg on Class Actions*, § 11.47; *Wershba*, 91 Cal.App.4th at 245; *In re Paine Webber Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

⁹⁷ *See Grover Decl.* at ¶¶ 2-4, 16, 44; *Perez Declaration* at ¶¶ 6-15 and Ex. 1.

⁹⁸ *Grover Decl.* at ¶¶ 10-12, 36-38.

⁹⁹ *Grover Decl.* at ¶¶ 16-38.

¹⁰⁰ *See Ex. 1* at ¶¶ 12, 29, 31, 56-57.

¹⁰¹ *See Ex. 1* at ¶¶ 30, 31, 58.

enhancement payment, taking into consideration the risks, time, effort, and expenses they incurred in coming forward to provide invaluable information, negotiate, and litigate this matter on behalf of all Class Members against his former employer.¹⁰² The named Plaintiffs also will provide a General Release of their individual claims against Defendant.¹⁰³

Fairness of the settlement is further demonstrated by the uncertainty and risks to Plaintiffs involved both in not prevailing on one or more of the causes of action or theories alleged in the complaint and in non-certification. Defendant adamantly disputes Plaintiffs' ability to certify a class and prove that Defendant is liable to the Class for its off the clock time compensation practices and meal period and rest break practices. Were a class not certified, it is unlikely that any Class Member would maintain an individual action against Defendant.¹⁰⁴

Despite the asserted fairness of the settlement terms, should any proposed Class Member, upon reviewing the Notice of proposed settlement, object to the terms of the settlement as set forth in the Stipulation, each has the right to submit a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member would retain any claim he or she may have against Defendant.¹⁰⁵ Moreover, Class Members who do not opt out may object to one or more of the settlement terms set forth in the Stipulation.¹⁰⁶

D. The PAGA Payment is reasonable and warrants approval.

Labor Code § 2699(l)(2) requires court approval of any PAGA settlement. Class action requirements do not apply to PAGA actions.¹⁰⁷ "PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."¹⁰⁸ The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA

¹⁰² Ex. 1 at ¶ 40; Grover Decl. at ¶ 45.

¹⁰³ Ex. 1 at ¶¶ 40, 73.

¹⁰⁴ See Grover Decl. at ¶¶ 16-20, 30, 36-38.

¹⁰⁵ Ex. 1 at ¶ 55.

¹⁰⁶ Ex. 1 at ¶ 59.

¹⁰⁷ *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 974.

¹⁰⁸ *Baumann, supra*, 747 F.3d at 1122.

settlement is appropriate.¹⁰⁹

As part of the final approval process, Plaintiffs will seek the Court's approval of the PAGA portion of the Settlement, including the \$100,000 PAGA Settlement Amount, the distribution plan for the PAGA Settlement Amount and the PAGA Release.¹¹⁰

V. CONCLUSION

Based on the foregoing, Plaintiffs request that this Court, as part of its preliminary approval of the settlement, do the following:

1. Review the proposed Stipulation setting forth the settlement terms;
2. Consider whether the proposed settlement preliminarily appears to be fair, reasonable and adequate, and whether the proposed settlement class preliminarily appears to meet the applicable certification criteria;
3. Preliminary approve the Stipulation;
4. Confirm Eugene Martinez, Robert Williams, and John Lilla as Class Representative and appoint Keller Grover LLP, Capstone Law APC, and Lawyers for Justice, P.C., as Class Counsel solely for settlement purposes;
5. Approve Simpluris, Inc. as Settlement Administrator with regard to handling the notice and settlement procedure as set forth more particularly in the Stipulation; and
6. Enter an Order provisionally approving the proposed Class on a non-mandatory basis, approving the proposed Notice to be distributed to Class Members, directing the Notice to be given to Class Members in accordance with the procedure set forth in the Stipulation, and setting a date for a final fairness and approval hearing.

Respectfully submitted,

Dated: November 30, 2022

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT W. SPENCER

Attorneys for Plaintiffs and Proposed Class Counsel

¹⁰⁹ *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589.

¹¹⁰ Grover Decl. at ¶ 48.

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 **November 30, 2022**, in the case of *Cascade Drilling Wage and Hour Cases*, JCCP No. 5215, I served the foregoing document(s):

NOTICE OF MOTION AND MOTION IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

KONING ZOLLAR LLP

Blake Zollar

blake@kzllp.com

Shaun Paisley

shaun@kzllp.com

Neal Gibeault

neal@kzllp.com

Attorneys for Defendant

Cascade Drilling, L.P.

CAPSTONE LAW APC

Robert Drexler

Robert.Drexler@CapstoneLawyers.com

Molly DeSario

Molly.DeSario@CapstoneLawyers.com

Jonathan Lee

Jonathan.Lee@CapstoneLawyers.com

Attorneys for Plaintiffs

Eugene Martinez and Robert Williams

LAWYERS FOR JUSTICE, PC

Edwin Aiwazian, Esq.

edwin@calljustice.com

Arby Aiwazian, Esq.

arby@calljustice.com

Joanna Ghosh, Esq.

joanna@calljustice.com

Attorneys for Plaintiffs

John Lilla

☒	(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



Court Reservation Receipt

Reservation

Reservation ID: 218655095643	Status: RESERVED
Reservation Type: Motion re: (Motion For Preliminary Approval Of Class Action And Private Attorney General Act Settlement)	Number of Motions: 1
Case Number: RG21090743	Case Title: Martinez VS Cascade Drilling, L.P.
Filing Party: Eugene Martinez (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 19
Date/Time: January 9th 2023, 3:00PM	Confirmation Code: CR-AWRPDYY2HU94UD55F

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX1151	Authorization: 06329G
Payment Date: 2022-11-09	

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