

1 B. James Fitzpatrick (SBN: 129056)
2 Laura L. Franklin (SBN: 282642)
3 FITZPATRICK & SWANSTON
4 555 S. Main Street
5 Salinas, CA 93901
6 Telephone: (831) 755-1311
7 Facsimile: (831) 755-1319

8 Attorneys for Plaintiff,
9 RICHARD MONREAL

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

RICHARD MONREAL, on behalf of
himself and all similarly aggrieved
employees,

Plaintiff,

v.

PARADISE ELECTRICAL SERVICES,
INC.; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV00078

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

Date: June 13, 2025

Time: 8:30 A.M.

Dept.: 5

Complaint Filed: April 8, 2022

Trial Date: Not Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 13, 2025, at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Syda Kosofsky Cogliati, judge presiding, in
4 Department 5 of the above referenced Court, located at 701 Ocean Street, Santa Cruz, CA
5 95060, Plaintiff Richard Monreal ("Plaintiff") will and hereby does move this Court for the
6 following relief with respect to the Joint Stipulation and Settlement Agreement of Class
7 Action and PAGA Claims ("Agreement" or "Settlement Agreement") entered into by Plaintiff
8 and Defendant Paradise Electrical Services, Inc. ("Defendant") (Plaintiff and Defendant shall
9 collectively be referred to as the "Parties"):

- 10 1. That the Court approve the Agreement referenced above;
- 11 2. That the Court certify the following Class for settlement purposes:
12 all current and former non-exempt employees of Paradise
13 Electrical Services, Inc. who were employed in the State of
14 California at any time from April 8, 2018, through May 22, 2024
15 (the "Class").
- 16 3. That Plaintiff be appointed as the Class Representative and B. James Fitzpatrick
17 and Laura L. Franklin of Fitzpatrick & Swanston be appointed as Class Counsel;
- 18 4. That the Court preliminarily approve the Agreement and the Gross Settlement
19 Amount in the amount of Three Hundred Twenty-five Thousand Dollars and 00/100 Cents
20 (\$325,000.00);
- 21 5. That the Court finds on a preliminary basis that the Agreement appears to be
22 within the range of reasonableness of a settlement, Class Representatives enhancement
23 payment, attorneys' fees and costs, settlement administration costs, and the allocation of
24 payments to Class Members, that could ultimately be given final approval by this Court;
- 25 6. That the Court approve the mailing of the proposed "Notice of Proposed Class
26 Action Settlement" ("Notice Packet") to be sent to Class Members;
- 27 7. That the Court appoint Phoenix Settlement Administrators as the Settlement
28 Administrator; and
8. That the Court schedule the matter for a Final Fairness and Final Approval
hearing.

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court
3 to preliminarily certify a class for settlement purposes.

4 The basis for this Motion, filed without any opposition from Defendant, is that the
5 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the
6 Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of,
7 or object to the settlement.

8 This Motion will be based on the attached Memorandum of Points and Authorities, the
9 Settlement Agreement and the proposed Notice, and the supporting Declarations of B. James
10 Fitzpatrick, Laura L. Franklin, and Plaintiff, upon the oral arguments of counsel (should there
11 be any), and on the complete records and file herein.

12
13 Dated: April 28, 2025

FITZPATRICK & SWANSTON

14
15 By: /s/ Laura L. Franklin
16 B. James Fitzpatrick
17 Laura L. Franklin
18 Attorneys for Plaintiff,
19 RICHARD MONREAL, on behalf of
20 himself and all similarly aggrieved
21 employees
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TABLE OF CONTENTS

	<u>Page</u>
<u>I. INTRODUCTION</u>	7
<u>II. PROCEDURAL HISTORY</u>	8
<u>III. DISCUSSION</u>	9
<u>A. Proposed Class Definition</u>	10
<u>B. Settlement Terms and Evaluation</u>	10
<u>1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive</u>	15
<u>2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants</u>	16
<u>3. Scope of the Release of Class Members' Claims</u>	17
<u>4. Tax Treatment of Settlement Amounts</u>	17
<u>5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations</u>	17
<u>C. Notice to Class Members</u>	17
<u>D. Typicality and Adequacy of Representation</u>	18
<u>1. Class Representatives' Claims are Typical of the Class</u>	18
<u>2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Actions</u>	19
<u>E. Costs and Fees</u>	19
<u>1. Attorneys' Fees and Costs</u>	19
<u>2. Proposed Payment to the Class Representatives</u>	21
<u>3. Settlement Administration Costs</u>	22
<u>IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL</u>	22

TABLE OF AUTHORITIES

Page(s)

State Cases

<i>Brinker Rest. Corp. v. Superior Ct.</i> , 53 Cal. 4th 1004, 1040, 273 P.3d 513 (2012)	15
<i>City and County of San Francisco v. Sweet</i> , 12 Cal. 4th 105 (1995).....	20
<i>City of San Jose v. Superior Court</i> , 12 Cal. 3d 447 (1974)	18
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , 59 Cal. 4th 1 (2014).....	15
<i>Laffitte v. Robert Half Int'l</i> , 1 Cal. 5th 480 (2016)	20, 21
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981).....	18
<i>Serrano v. Priest</i> , 20 Cal. 3d 25 (1977)	19, 20
<i>Stephens v. Montgomery Ward & Co.</i> , 193 Cal. App. 3d 411 (1987)	18
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971)	18

Federal Cases

<i>Apodaca v. Costco Wholesale Corp.</i> , 2014 WL 2533427 (C.D. Cal. June 5, 2014)	14
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	19
<i>Chavez v. Converse, Inc.</i> , 2020 WL 1233919 (N.D. Cal. 2020).....	14
<i>Hammon v. Barry</i> , 752 F.Supp. 1087 (D.D.C. 1990)	12
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (1998).....	18
<i>Harris v. Vector Mktg. Corp.</i> , 656 F. Supp. 2d 1128 (N.D. Cal. 2009).....	14
<i>Hill v. Walmart, Inc.</i> , 32 F.4th 811 (9th Cir. 2022)	14
<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	12
<i>In re Chicken Antitrust Litig.</i> , 560 F. Supp. 957 (N.D. Ga. 1980).....	12
<i>Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.</i> , 834 F.2d 677 (7th Cir. 1987)	12
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> , No. S279397, 2024 WL 1979980, at *1 (Cal. May 6, 2024)	14
<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	12
<i>Priddy v. Edelman</i> , 883 F.2d 438 (6th Cir. 1989).....	12
<i>Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n</i> , 79 F.R.D. 571 (E.D. Pa. 1978).....	12

1 *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979).....12

2 *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759 (9th Cir. 1997)19, 20

3 **Statutes**

4 Labor Code § 226(a)13

5 Labor Code § 2810.3.....12

6 **Other Authorities**

7 Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th ed. 2002)..10, 11

8 *Manual for Complex Litigation, Third* § 30.41 (Fed. Jud. Ctr., 3rd ed. 1995)9, 10

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class action arising from Defendant Paradise Electrical
4 Services, Inc.'s ("Defendant") alleged violations of the California Labor Code. Specifically,
5 Plaintiff Richard Monreal ("Plaintiff") asserted that Defendant failed to pay for all hours
6 worked, including minimum and overtime wages, failed to provide timely, off-duty meal and
7 rest breaks and/or pay premiums for missed or late meal and rest breaks, failed to pay all
8 earned wages when due and upon separation of employment, failed to reimburse for work-
9 related expenses, and failed to provide accurate wage statements and keep accurate records.
10 Defendant denies all allegations of the complaint and contends that its wage and hour practices
11 comply with the Labor Code.

12 Prior to the settlement of this action, Plaintiff and Defendant (jointly referred to as the
13 "Parties") thoroughly investigated the facts relating to the claims alleged in the operative
14 Complaint against Defendant. The Parties exchanged written discovery and Defendant
15 produced time and pay records for the Class Members, as well as additional information that
16 allowed Plaintiff's counsel to evaluate Defendant's exposure. With the assistance of an
17 experienced mediator, Christopher E. Panetta, Esq. of Fenton & Keller, the Parties were able
18 to reach a settlement, the key terms of which are as follows:

- 19 • Gross Settlement Amount ("GSA") of \$325,000, which will be distributed on a
20 non-reversionary basis, such that no monies will revert to Defendant;
21 • Class size of approximately 240 individuals (Class Members do not need to
22 submit claim forms to participate in the settlement);
23 • PAGA group size of approximately 210 individuals;
24 • Service Award of up to \$5,000.00 to Plaintiff for his efforts in prosecuting this
25 class action and in consideration for providing a general release of claims;
26 • PAGA Penalties Payment of \$16,250.00 (75% to LWDA; 25% to the aggrieved
27 employees);
28 • Class Counsel's attorneys' fees of one-third of GSA, or \$108,333.33;
• Class Counsel's litigation costs of up to \$6,500.00;
• Settlement Administration Costs of up to \$8,000.00;
• Net Distribution Amount of approximately \$197,166.67; and
• Average of \$10.01 for each workweek worked and approximately \$821.53 per
class member, if based on a raw average.

See Agreement, attached as Exhibit 1 to the Declaration of Laura L. Franklin ("Franklin

Decl.”), ¶¶ 44.a-d.

The Parties and their respective counsel are of the opinion that the settlement, for the consideration and on the terms outlined in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the Class and Defendant in light of all known circumstances and the expenses and risks inherent in litigation. While Plaintiff and his counsel are confident that they could prevail on class certification and on the merits of the claims at trial, they recognize the inherent risks in drawn-out litigation and the specific risk that Plaintiff could fail to establish liability or that certification is appropriate. Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On February 2, 2021, Plaintiff submitted his Notice of Labor Law Violations to the Labor and Workforce Development Agency and Defendant. Plaintiff commenced this civil action on April 8, 2022, with the filing of his Class and PAGA Complaint in Monterey Superior Court. In September 2022, the Parties stipulated to changing the venue to Santa Cruz County Superior Court. Defendant filed its Answer March 6, 2023.

On May 22, 2024, the Parties participated in private mediation before mediator Christopher E. Panetta, Esq. of Fenton & Keller, a well-respected mediator with extensive experience in complex wage and hour matters. Franklin Decl. ¶ 5. The mediation was conducted after the parties engaged in a thorough and cooperative exchange of relevant information and documents. *Id.* In addition to formal discovery conducted, Defendant produced data and documents requested by Plaintiff’s counsel, including an agreed twenty percent (20%) sampling of the hardcopy timecard and pay records kept by Defendant, many of them handwritten. *Id.* The agreed sampling consists of the time and pay records for all employees for every fifth pay period in the class period, in addition to Plaintiff’s time and pay records, which were produced in their entirety. *Id.* Notes and communications related to employee time entries and any corresponding adjustments were also produced with the records. *Id.*

After a full day of mediation, the Parties were able to reach an agreement. The Parties first executed a memorandum of understanding, followed by the more detailed Agreement submitted herewith (Exhibit 1 to Franklin Declaration), which was fully executed December 6, 2024. Franklin Decl. ¶ 6.

III. DISCUSSION

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is 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.

(Fed. Jud. Ctr., 3rd ed. 1995).

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

The procedures for the parties’ 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 of settlement, which is submitted to the court for preliminary approval. The stipulation

1 should set forth the central terms of the agreement, including but not
2 limited to, the amount of settlement, form of payment, manner of
3 determining the effective date of settlement and any recapture
4 clause.

5 *Id.* § 11.24.

6 Here, the Parties have reached such an agreement and have submitted to this Court in
7 connection with this Motion a copy of the Agreement fully setting forth the agreement reached
8 by the Parties. The Agreement sets forth all terms of the agreement reached by the Parties,
9 which include, among other things, the method for calculating the Class Members' Individual
10 Settlement Payments from the Gross Settlement Amount.

11 **A. Proposed Class Definition**

12 The current settlement is being settled on behalf of “all current and former non-exempt
13 employees of Paradise Electrical Services, Inc. who were employed in the State of California
14 at any time during the Class Period” (the “Class”). *See* Agreement ¶ 3. The Class Period is
15 defined as “the period commencing on April 8, 2018, and ending May 22, 2024.” *See*
16 Agreement ¶ 7.

17 Pursuant to the Agreement and data provided by Defendant in advance of mediation,
18 Defendant has represented that there are approximately 240 total Class Members who
19 collectively worked approximately 19,700 workweeks during the Class Period. *See* Agreement
20 ¶ 15; Franklin Decl. ¶ 8.

21 **B. Settlement Terms and Evaluation**

22 Courts presume the absence of fraud or collusion in the negotiation of settlement
23 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
24 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682
25 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
26 do not substitute their judgment for that of the proponents, particularly where, as here,
27 settlement has been reached with the participation of experienced counsel familiar with the
28 litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.

1 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
2 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

3 While the recommendations of counsel proposing the settlement are not conclusive, the
4 Court can properly take them into account, particularly where, as here, they have been
5 involved in informal discovery and negotiations for some period of time, appear to be
6 competent, have experience with this type of litigation, and have exchanged substantial
7 evidence from the opposing party. *See Newberg on Class Actions*, *supra* § 11.47; *Nat'l Rural*
8 *Telecomms. Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length
9 negotiation process is preserved, however, a strong initial presumption of fairness attaches to
10 the proposed settlement...[citations] and ‘great weight’ is accorded to the recommendations of
11 counsel, who are most closely acquainted with the facts of the underlying litigation”).

12 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage
13 and hour class action litigation. Plaintiff’s counsel has been approved as class counsel in a
14 number of wage and hour class actions and have extensive litigation experience. Declaration
15 of B. James Fitzpatrick (“Fitzpatrick Decl.”) ¶ 4; Franklin Decl. ¶¶ 26-27. Each side has
16 apprised the other of their respective factual contentions, legal theories, and defenses, resulting
17 in arms’ length negotiations taking place between the Parties. Franklin Decl. ¶ 2.

18 As noted above, Defendant produced the time and pay records and data that permitted
19 Plaintiff to evaluate the potential exposure. The records produced indicate that, prior to
20 approximately August 1, 2021, Defendant did not accurately track or compensate non-exempt
21 employees for their actual hours worked. Franklin Decl. ¶ 15. While employees in some
22 departments handwrote rounded time entries for their start/stop times, most employees during
23 this time appear to have recorded only their billable time at various assigned job sites each
24 day, not their actual start and stop times for the workday. *Id.* In either case, no records were
25 found covering this time period that showed the employees’ start or stop times for meal
26 periods. *Id.* With rare exceptions, employees were paid for exactly 8.0 hours of work each day
27 (no overtime) after the uniform deduction of 0.5 hours for an assumed meal period. *Id.*
28 Plaintiff alleges that this failure to record and pay for employees’ actual hours resulted in a

1 failure to pay overtime wages that he and other Class Members were regularly required to
2 work, including mandatory travel time during which Plaintiff and other employees were
3 typically transporting company equipment. *Id.*

4 Defendant also produced its written policies applicable to this matter, as contained
5 within two versions of its Employee Handbook covering the Class Period. Franklin Decl. ¶ 14.
6 In both versions, the policies pertaining to Plaintiff's claims were generally compliant with
7 California law, including Defendant's policies regarding Meal Periods, Rest Periods, and
8 Work Hours and Overtime. *Id.* Although both versions of the handbook include a policy
9 titled "Company Credit Cards" that outlines rules for "selected employees" who are issued
10 company credit cards for business expenses, neither contains a policy addressing
11 reimbursement for work-related expenses incurred when a company credit card is not
12 available. *Id.*

13 Based on the class data and records provided by Defendant, Plaintiff estimated that
14 Defendant could face potential maximum liability of up to approximately \$4.1 million for
15 Plaintiff's class claims, if Plaintiff was successful on all his class and PAGA claims and
16 obtained certification. Franklin Decl. ¶ 16. This amount likely overstates the realistic range of
17 recovery, however, for reasons discussed below. Plaintiff calculated Defendant's potential
18 liability as follows:

- 19 • \$229,567.20 for unpaid hourly and overtime wages, assuming 12 minutes of off-
20 the-clock work per week (19,700 workweeks x 0.2 hrs. x \$23.35 average hourly
21 rate) + (19,700 workweeks x 0.2 hrs. x \$35.03 avg. overtime rate of pay);
- 22 • \$919,990 for meal period violations and \$919,990 for rest period violations,
23 assuming 2 violations per workweek for each across 19,700 workweeks with
24 \$23.35 average rate of pay;
- 25 • \$960,000 for Labor Code § 226(e) penalties (\$4,000 x 240 class members)
- 26 • \$885,432.00 in waiting time penalties (158 former employees x \$186.80 avg.
27 daily rate x 30 days) [increasing to \$892,874.74 if factoring in estimated 12 min.
28 of (unpaid) overtime per week];

- \$159,310.55 Reimbursement for required work-related use of employees' personal cell phones [4,551.73 months (19,700 workweeks / 4.33 avg. weeks/mo.) x \$35]

Franklin Decl. ¶ 16.

Plaintiff's estimate above assumes certification of the class. However, these types of claims can be difficult to certify for class treatment where the defendant maintains facially compliant policies. Accordingly, this exposure is entitled to a significant discount at the settlement stage given the difficulties in proving this claim on a class basis if moving forward with litigation. Franklin Decl. ¶ 17.

Each of Plaintiff's putative class claims faced unique challenges from Defendant. For one, Defendant maintains that it paid employees for all hours worked, even during the period when its employees recorded only rounded start and stop times or simply recorded that they worked 8.0 hours and it was assumed that they took exactly 30 minutes for lunch. Franklin Decl. ¶ 18. Defendant asserts that its employees work independently and without interruption from its owners or other job tasks, such that there is no reason they cannot take their meal and rest breaks. *Id.* Defendant asserts that witness testimony would confirm that Defendant created and maintained a culture whereby all employees are entitled to take, and do take, their meal and rest periods regularly. *Id.* Defendant further argues that, even assuming Plaintiff or any other employee can articulate a claim for unpaid wages or meal and/or rest period violations, such claims will require an individualized analysis for each employee and are not appropriate for class certification. *Id.*

Additionally, Defendant would also argue that the asserted waiting time penalties are subject to a complete defense. Defendant would have argued at trial that a good faith dispute exists as to whether the allegedly underpaid wages or meal/rest period premiums were due to Plaintiff and the Class Members, particularly considering its facially compliant written policies. Franklin Decl. ¶ 19. If Defendant was successful in its good faith defense, the Court may not have awarded any waiting time penalties or wage statement penalties, potentially reducing Defendant's class claim exposure by nearly half. *See, Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056, 1087 (2024) (holding that, similar to the good faith defense

1 applicable to Section 203 penalties, “an employer’s objectively reasonable, good faith belief
2 that it has provided employees with adequate wage statements precludes an award of penalties
3 under section 226.”).

4 Plaintiff calculated Defendant’s probable maximum exposure under PAGA to be
5 \$1,570,000.00 (15,700 pay periods x \$100 penalty). Franklin Decl. ¶ 20. This assumes
6 complete victory at trial and that the Court would award the maximum penalty of \$100 per pay
7 period, which is far from certain as discussed above. Further, while PAGA provides for a
8 heightened penalty for a “subsequent violation,” courts are hesitant to award the heightened
9 penalty absent a showing of a prior violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th
10 1157, 1209 (2008); accord *Amalgamated Transit Union Local 1309 v. Laidlaw Transit*
11 *Service, Inc.* 2009 WL 2448430 at *9 (S.D. Cal. Aug. 10, 2009) (“[u]nder California law,
12 courts have held that employers are not subject to heightened penalties for subsequent
13 violations unless and until a court or commissioner notifies the employer that it is in violation
14 of the Labor Code”); see also *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021)
15 (holding no subsequent penalty unless prior citation or court ruling).

16 Even assuming Plaintiff ultimately prevailed on his PAGA claims, the Court still has
17 discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(e)(2), the Court can
18 decline to award PAGA penalties where “if, based on the facts and circumstances of the
19 particular case, to do otherwise, would result in an award that is unjust, arbitrary and
20 oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington*
21 *v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA
22 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
23 the employer’s good faith attempt at complying with the law. *Id.* at p. 517. Upon review, the
24 Court of Appeal found such a reduction to be proper. *Id.* at p. 539. Thus, even if Plaintiff was
25 to successfully prove his claims at trial, there is a possibility that the Court may only award a
26 small percentage of PAGA penalties, as the Court has discretion to do so.

27 While Plaintiff believes in the merits of the alleged claims, Plaintiff is aware that
28 Defendant may raise some of the defenses to the claims addressed above that could persuade

1 the Court to reduce the PAGA penalties. Franklin Decl. ¶ 20. The Gross Settlement Amount
2 was premised with this risk in mind, associated with the possibility of the Court significantly
3 reducing Plaintiff's PAGA penalties, along with other attendant risks. *Id.*

4 Although Plaintiff believes that the class can be certified, Plaintiff also believes in the
5 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
6 involved in not prevailing on one or more of the causes of action or theories alleged in the
7 operative Complaint, the possibility of non-certification, and the potential for appeals. Franklin
8 Decl. ¶ 21. These risks on class certification are compounded by the California Supreme
9 Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs
10 obtained class certification and subsequently prevailed at trial after eight years of litigation,
11 but the judgment and the certification ruling were reversed by the California Supreme Court
12 after an additional five years of litigation. The case was remanded to superior court where
13 class certification was denied and plaintiffs' subsequent appeal also was denied.

14 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
15 Proposed Class Action Settlement ("Notice Packet"), should any Class Member wish to pursue
16 his or her own case for the claims being released herein, each Class Member has the right to
17 submit a Request for Exclusion (*i.e.*, opt-out) from the settlement. *See* Notice Packet, attached
18 as **Exhibit A** to the Agreement. Moreover, as set forth in the Notice Packet, Class Members
19 are advised of their right to attend the final approval hearing and/or object to any of the terms
20 contained in the Agreement. *Id.*

21 **1. Amount and Manner of Distribution of the Compensation to be**
22 **Provided to Class Members Including the Amount, or an Estimate, of**
What Each Class Member Will Receive

23 The Agreement provides for \$325,000.00, as the total Gross Settlement Amount. *See*
24 Agreement ¶ 15. The Net Settlement Amount [calculated after deduction of the Class Counsel
25 Award of attorneys' fees (one third of the Maximum Settlement Amount, or One Hundred
26 Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$108,333.33)),
27 litigation costs (up to Six Thousand Five Hundred Dollars(\$6,500.00)), Class Representative
28 Enhancement Payment (up to \$5,000.00), PAGA Penalties of Sixteen Thousand, Two

1 Hundred and Fifty Dollars (\$16,250.00), and Settlement Administration Costs (up to
2 \$8,000.00)] is estimated to be approximately \$197,166.67. *See* Agreement ¶¶ 19, 44.c-d. Each
3 Class Member who does not opt-out of the settlement (“Participating Class Member”) will be
4 awarded a portion of the Net Settlement Amount on a pro-rata basis, based upon the total
5 number of workweeks he or she worked during the Class Period. *See* Agreement ¶ 44.d.i;
6 Franklin Decl. ¶ 9.

7 Based thereon, each Participating Class Member potentially may recover
8 approximately \$10.01 per workweek (Net Settlement Amount \$197,166.67 divided by 19,700
9 estimated Total Number of Workweeks). Franklin Decl. ¶ 10. Finally, funds from any checks
10 that have not been cashed within 180 days of issuance shall be paid to the designated *cy pres*
11 recipient: Watsonville Law Center. *See* Agreement ¶ 44.d.iii. Class Counsel does not have any
12 conflicts of interest with this designated recipient. Franklin Decl. ¶ 10; Fitzpatrick Decl. ¶ 6.

13 **2. The Calculation of the Individual PAGA Payments**

14 Consistent with the requirements of PAGA, the Agreement requires that twenty-five
15 percent of the PAGA Payment (the “PAGA Member Payment”) will be paid to the aggrieved
16 employees (“PAGA Members”). Agreement ¶¶ 23, 44.d.vii.1. PAGA Members are defined as
17 “all current and former non-exempt employees of Defendant who were employed in the State
18 of California at any time during the PAGA Period.” *Id.* ¶¶ 22, 44.d.vii.1. The amount allocated
19 to each PAGA Member will be based on the number of pay periods he or she worked during
20 the PAGA Period. *Id.* ¶¶ 24, 44.d.vii.1. All Individual PAGA Payments shall be allocated as
21 100% penalties. *Id.* ¶ 44.d.vii.1.

22 Further, PAGA Members may not opt-out of or object to the PAGA portion of the
23 settlement. Agreement ¶¶ 44.d.vii.1, 50. In exchange for the individual payment of PAGA
24 penalties, PAGA Members will release:

25 [A]ll claims, causes of action, demands, damages, or liabilities
26 arising at any time during the PAGA Period that were pled or
27 which could have been pled based on the factual allegations
28 contained in the operative Complaints in the Action or any
amendments thereto, for civil penalties under the PAGA including
claims premised on alleged violations of Labor Code §§ 201,

201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, 2698, and the Wage Order. (“PAGA Released Claims”).

Id. ¶ 26.

3. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendant

None of the settlement funds will revert to Defendant. *See* Agreement ¶ 44.

4. Scope of the Release of Class Members’ Claims

As a condition of participating in this class action settlement, Participating Class Members shall release, “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 Complaint in the Actions or any amendments thereto. (“Released Claims”). Agreement ¶ 29. The release is appropriately limited to claims as pled or factually alleged in the Action.

5. Tax Treatment of Settlement Amounts

The Parties have agreed that twenty percent (20%) of the Individual Settlement Payments to Class Members shall be classified as wages and subject to required withholdings and deductions for payments. Agreement ¶ 44.d.iii. The remaining eighty percent (80%) of the Individual Settlement Payments shall be classified as penalties and interest. *Id.*

6. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. Class Members will not be required to make a submission to participate in the settlement. This substantially decreases the amount of burden each Class Member must bear in order to receive their settlement payment. If a Class Member does not wish to take part in this settlement and be bound by the release, the Class Member must submit a Request for Exclusion. *See* Agreement ¶¶ 27, 49.

C. Notice to Class Members

Should the Court grant the instant motion, Defendant will provide the Settlement

1 Administrator with a list containing each Class Member's full name, last known address,
2 Social Security number, and the number of workweeks worked by each Class Member during
3 the Class Period, and the number of pay periods worked by each PAGA Member during the
4 PAGA Period ("Class List") within fourteen (14) calendar days of preliminary approval.
5 Agreement ¶ 45. Upon receipt of the information and prior to mailing the Notice of Proposed
6 Class Action Settlement to Class Members, the Settlement Administrator shall perform a
7 search based on the National Change of Address Database for information to update and
8 correct for any known or identifiable address changes. *Id.* ¶ 47. Within ten (10) calendar days
9 of receipt of the Class List from Defendant, the Settlement Administrator will mail the Notice
10 Packet to Class Members. Any Notice Packet returned to the Settlement Administrator as non-
11 deliverable on or before the opt-out deadline shall be sent via regular first-class U.S. mail to
12 the forwarding address affixed thereto. *Id.* If no forwarding address is provided, the Settlement
13 Administrator shall perform a skip trace or similar search to locate the most current address
14 and resend the Notice Packet. *Id.* As set forth in the Notice Packet, Class Members will be
15 allowed to opt out of the settlement by a certain deadline, or object to the settlement.
16 Agreement, Ex. A.

17 **D. Typicality and Adequacy of Representation**

18 **1. Class Representative's Claims are Typical of the Class**

19 The commonality requirement is met when there are questions of law and fact common
20 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of
21 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
22 salient facts couple with disparate legal remedies within the class"). Commonality requires
23 only that some common legal or factual questions exist; the plaintiffs need not show that all
24 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
25 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v.*
26 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
27 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is
28 here, the class wide impact of the defendant's policies satisfies the commonality requirement.

1 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

2 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or
3 procedure, violated the Labor Code by failing to: pay for all hours worked, including
4 minimum and overtime wages, provide off-duty meal and rest breaks, pay premiums for
5 missed or late meal and rest periods, reimburse workers for mandatory work-related expenses,
6 pay all earned wages when due and upon separation of employment, and provide accurate
7 wage statements. Franklin Decl. ¶ 12. Plaintiff contends that he was subjected to the same
8 policies and practices as other Class Members and that their claims are typical to those of the
9 Class.

10 Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such
11 issues been raised or presented. Plaintiff has taken all necessary steps to represent the interests
12 of the Class, and by providing information and documents to Class Counsel. For such reasons,
13 Plaintiff has adequately represented the Class Members and will continue to do so.

14 **2. Class Counsel Have Adequately Represented the Class and Have**
15 **Experience with Wage and Hour Class Actions**

16 From the inception of the case, Class Counsel have zealously represented the interests
17 of the class. The settlement was obtained for the benefit of the Class, as opposed to the
18 individual Class Representative. Further, Class Counsel have been approved as class counsel
19 on a number of prior cases, have litigated numerous other class action cases, and are
20 competent to represent the class.

21 **E. Costs and Fees**

22 **1. Attorneys' Fees and Costs**

23 California state and federal courts have recognized that an appropriate method for
24 determining award of attorneys' fees is based on a percentage of the total value of benefits to
25 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
26 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
27 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
28 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation

1 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
2 entire burden alone.” *Vincent*, 557 F.2d at 769.

3 The Common Fund doctrine is predicated on the principle of preventing unjust
4 enrichment. When a litigant’s efforts create or preserve a fund from which others derive
5 benefits, she may require the passive beneficiaries to compensate those who created the fund.
6 Both California state and federal courts have embraced this doctrine. *Serrano*, 20 Cal. 3d at
7 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.
8 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine
9 has been applied “consistently in California when an action brought by one party creates a
10 fund in which other persons are entitled to share.” The reasons for applying the common fund
11 doctrine include: “fairness to the successful litigant, who might otherwise receive no benefit
12 because his recovery might be consumed by the expenses; correlative prevention of an unfair
13 advantage to the others who are entitled to share in the fund and who should bear their share of
14 the burden of its recovery; encouragement of the attorney for the successful litigant who will
15 be more willing to undertake and diligently prosecute proper litigation for the protection or
16 recovery of the fund if he is assured that he will be properly and directly compensated should
17 his efforts be successful.” *Id.*

18 Indeed, the California Supreme Court has also held that the award of attorneys’ fees in
19 common fund wage and hour class action settlements should start with the percentage method.
20 *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming
21 majority of federal and state courts in holding that when class action litigation establishes a
22 monetary fund for the benefit of the class members, and the trial court in its equitable powers
23 awards class counsel a fee out of that fund, the court may determine the amount of a
24 reasonable fee by choosing an appropriate percentage of the fund created”).

25 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
26 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
27 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
28 “extraordinarily high or low, the trial court should consider whether the percentage used

1 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

2 The Parties have agreed to a payment of a maximum of one-third of the Gross
3 Settlement Amount, or \$108,333.33, for payment to Class Counsel as attorneys’ fees.
4 Agreement ¶ 44.d.vi. The Parties have agreed to a payment of the foregoing attorneys’ fees
5 and, thus, this payment should be presumed to be fair. Further, the parties have agreed to
6 reimbursement of Class Counsel’s litigation costs up to \$6,500.00. *Id.* Class Counsel have, at
7 their own risk, expended costs, for example, to file this instant action, effectuate service of
8 process, pay mediation fees, and pay other litigation-related costs. Based on the foregoing, the
9 Court should preliminarily approve the attorneys’ fees and costs being requested by the
10 Parties.

11 2. Proposed Payment to the Class Representative

12 Class Representative Richard Monreal requests an enhancement (“Service Award”) of
13 \$5,000.00. Agreement ¶ 44.d.vii. The Class Representative met and conferred with Class
14 Counsel on a number of occasions to discuss the case, provided documents and information to
15 Class Counsel, and reviewed the Settlement Agreement. Monreal Decl. ¶ 5. As part of his
16 duties as the Class Representative, Plaintiff provided invaluable information, evidence, and
17 documents that resulted in this settlement. In addition to the invaluable services that they
18 provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as
19 the Class Representative and seeking benefits on behalf of the Class. Because the claims
20 alleged by the Class Representative involved the payment of costs to the prevailing party,
21 Plaintiff could have possibly faced paying the costs of Defendant, had they not prevailed in
22 this action.

23 Furthermore, given that future employers are much less likely to hire individuals who
24 have filed a lawsuit against their prior employer, particularly in cases of this nature, Plaintiff
25 may face prejudice in the future from other potential employers. Plaintiff took this risk upon
26 himself and the whole Class benefited from these risks taken by Plaintiff. Class Members did
27 not have to file individual lawsuits and bear the risks of payment of costs if they did not
28 prevail, nor did they have to face the potential for retaliation and not getting future

employment had they filed a public lawsuit.

3. Settlement Administration Costs

The Parties have agreed to an estimated payment of \$8,000.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. Agreement ¶ 44.d.v. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved, as it results in an anticipated cost of approximately \$33.33 per class member, which is commensurate with similar settlements and was the lowest of two bids obtained by Plaintiff's counsel in connection with this Settlement. Franklin Decl. ¶ 25.

IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm's length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing.

Dated: April 28, 2025

FITZPATRICK & SWANSTON

By: /s/ Laura L. Franklin
B. James Fitzpatrick
Laura L. Franklin
Attorneys for Plaintiff,
RICHARD MONREAL, on behalf of
himself and all similarly aggrieved
employees

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On the date written below, I served the foregoing document(s), described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the interested parties in this action as indicated below and by the following means:

Daniel Muller
VENTURA HERSEY & MULLER, LLP
1506 Hamilton Ave.
San Jose, California 95125
Telephone: (408) 512-3022
Facsimile (408) 512-3023
dmuller@venturahersey.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 28, 2025, at Salinas, California.

Josie Favila