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Representing Plaintiffs YOVANIK FLORES,
HUNG NGUYEN, and DIEGO BEDYOA
MORENO on behalf of themselves, all others
similarly situated, and on behalf of the general
public

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

YOVANIK FLORES, HUNG NGUYEN,
and DIEGO BEDOYA MORENO on
behalf of themselves, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

HOME EXPRESS DELIVERY
SERVICE, LLC DBA TEMCO
LOGISTICS; and DOES 1-100,

Defendants.

Case No. RG21096517
(Related Case No. RG21100509)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE, SETTING
OF FINAL APPROVAL HEARING DATE**

Date: June 13, 2023
Time: 9:15 a.m.
Judge: Hon. Brad Seligman
Dept.: 23
Reservation ID: 062533213396

Filed: April 13, 2021
Trial: None Set

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1 **I. INTRODUCTION**

2 Plaintiffs Yovanik Flores, Hung Nguyen, and Diego Bedoya Moreno (“Plaintiffs”), on
3 behalf of themselves and the approximately 2,925-member putative class, respectfully request that
4 this Court preliminarily approve the Class and Representative Action Settlement Agreement and
5 Release of Claims (hereinafter “Agreement”¹) entered into between Plaintiffs and Defendant
6 Home Express Delivery Service, LLC dba Temco Logistics (“Defendant” or “Temco”)
7 (hereinafter Plaintiffs and Defendant are collectively referred to as the “Parties”). The Parties’
8 Agreement seeks to resolve claims raised against Defendant in this matter in exchange for a non-
9 reversionary \$1,200,000 Gross Settlement Amount. The proposed Class is comprised of all non-
10 exempt, hourly employees of Defendant in the State of California from April 13, 2017, through
11 June 9, 2023, who did not previously release their claims against Defendant. It is requested that
12 the Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the
13 claims and Defendant’s potential liability exposure, this proposed settlement of \$1,200,000 is
14 within the range of reasonableness. This settlement is estimated to pay Class Members an average
15 payment of approximately \$210.27.² The proposed Agreement satisfies all the criteria for
16 preliminary approval under Rule 3.769 of the California Rules of Court.

17 As the following sections show, Class Counsel believe that the proposed settlement is in
18 the best interests of the Class based on the negotiations and a detailed knowledge of the issues
19 presented in this action. The length and risks of trial and perils of litigation that affect the value of
20 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, the
21 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
22 establishing specific damages and various possible delays and appeals, were also carefully
23 considered by Class Counsel in arriving at the proposed settlement. The Agreement was the
24 product of an all-day mediation and post-mediation settlement discussions with respected wage
25 and hour mediator Michael Dickstein and was the product of non-collusive, arm’s-length

26

¹ The Parties’ Class and Representative Action Settlement Agreement and Release of Claims
27 (“Agreement”) is attached to the Declaration of David Mara, Esq. as Exhibit 1. “Exhibit 1” herein
refers to the Parties’ Agreement.

28 ² The Net Settlement Amount is approximately \$615,040. \$615,040 divided by approximately
2,925 Class Members = \$210.27.

1 negotiations by informed counsel and parties. The settlement is fair, reasonable, and adequate.
2 Accordingly, Plaintiffs seek: (1) preliminary approval of the terms contained in the Agreement;
3 (2) provisional certification of the Class; (3) appointment of Plaintiffs as Class Representatives;
4 (4) appointment of Mara Law Firm, PC, and Moon & Yang, APC, as Class Counsel; (5) approval
5 of the Parties' proposed notice of class action settlement³ (referred to herein as the "Class Notice"
6 or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for
7 final approval on October 31, 2023.

8 **II. BACKGROUND**

9 Temco is a premiere white glove solutions provider delivering and installing home goods.
10 Temco provides final mile delivery and installation services. Temco performs residential, business,
11 job site, and commercial deliveries.

12 A class action was filed by Plaintiffs Yovanik Flores and Hung Nguyen in the Alameda
13 County Superior Court on April 13, 2021 (Case No. RG21096517). On May 3, 2021, Plaintiffs
14 Flores and Nguyen filed a First Amended Complaint. The First Amended Complaint alleges the
15 following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure
16 to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit
17 rest periods; (5) knowing and intentional failure to comply with itemized employee wage statement
18 provisions; (6) failure to pay all wages at the time of termination of employment; and (7) violation
19 of Unfair Competition Law.

20 On February 24, 2021, Plaintiffs Yovanik Flores and Hung Nguyen provided notice to the
21 LWDA in accordance with the PAGA. On May 24, 2021, Plaintiffs filed a complaint in the
22 Alameda County Superior Court alleging that Defendant violated the PAGA (Case No.
23 RG21100509). Plaintiffs Flores and Nguyen's complaint alleges the following violations of the
24 PAGA against Defendant: (1) failure to pay all straight time wages; (2) failure to pay all overtime
25 wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5)
26 knowing and intentional failure to comply with itemized employee wage statement provisions; (6)
27 failure to pay all wages at the time of termination of employment.

28 ³ The Class Notice is attached to the Agreement as Exhibit A.

1 On March 8, 2022, Plaintiff Diego Bedoya Moreno filed a class action complaint against
2 Defendant in the Los Angeles County Superior Court (Case No. 22STCV08430). On April 27,
3 2022, Plaintiff Moreno filed a First Amended Complaint. Plaintiff Moreno's First Amended
4 Complaint alleges causes of action for: (1) failure to pay minimum wages; (2) failure to pay
5 overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest
6 breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay wages at
7 termination; (7) failure to provide accurate itemized wage statements; (8) Unfair Business
8 Practices; and (9) civil penalties under PAGA.

9 On April 14, 2023, Plaintiffs Flores and Nguyen filed a Second Amended Complaint in the
10 Alameda County Superior Court. The Second Amended Complaint adds Plaintiff Moreno and his
11 counsel into this action as well as Plaintiffs' claims for civil penalties under PAGA and claims for
12 Temco's failure to indemnify necessary business expenses, violation of temperature control
13 guidelines, and failure to timely pay wages due and payable during employment.

14 **III. INVESTIGATION/LITIGATION HISTORY**

15 **a. Discovery and Investigation**

16 After filing, the Parties engaged in formal and informal discovery. Plaintiffs served one set
17 of special interrogatories and one set of requests for production of documents on Defendant, which
18 Defendant responded to. In addition, Defendant served form interrogatories and requests for
19 production of documents on Plaintiffs, which Plaintiffs responded to. This discovery led to
20 Defendant producing hundreds of pages of documents and Excel files that contained a sampling
21 of Class Members' time and wage records and the hire and termination dates for all Class
22 Members. Included within these documents are Defendant's wage and hour policies, including its
23 meal and rest period policies. Plaintiffs had an expert conduct an analysis of the time and wage
24 records. (Mara Dec. ¶ 14).

25 **b. The Parties Agreed to Attend Mediation**

26 The Parties attended an all-day mediation with wage and hour mediator Michael Dickstein
27 on August 31, 2022. A settlement was not reached at mediation. With the help of Mr. Dickstein,
28 the Parties continued their settlement discussions post-mediation and were ultimately able to reach

1 a settlement. The Parties then met and conferred over all the terms of the settlement and finalized
2 their settlement in the Parties' Agreement. The Parties seek preliminary approval of the Agreement
3 in the instant motion. (*See* Mara Dec. ¶ 15; *see also* Exhibit 1 attached thereto).

4 **c. The Parties' Staunchly Conflicting Positions**

5 **i. Rest Periods**

6 Plaintiffs allege that employees are not provided with lawful rest periods. Employers have
7 an obligation to provide employees with ten (10) minute rest periods. An employer's obligation to
8 provide its employees with rest periods arises under the Industrial Welfare Commission Wage
9 Orders. Wage Order 4-2001, Section 12(A) states, "[e]very employer shall authorize and permit
10 all employees to take rest periods, which insofar as practicable shall be in the middle of each work
11 period. The authorized rest period time shall be based on the total hours worked daily at the rate
12 of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Here, Plaintiffs
13 allege that Defendant does not provide full net ten-minute rest periods, does not provide duty-free
14 rest periods, and only provides three rest periods per shift regardless of shift length.

15 Plaintiffs assert that Defendant's policies fail to inform employees that rest periods are a
16 net ten minutes at a suitable rest area. Plaintiffs contend that Defendant's policies allow a 5-minute
17 grace period on an employee's arrival at work and a 5-minute grace period when an employee
18 returns from lunch. Plaintiffs assert that no grace period is provided for rest periods. Plaintiffs
19 assert that this means that employees must use some of their rest period time to get to and from a
20 suitable rest location.

21 In addition, Plaintiffs contend that employees are not provided with duty-free rest periods.
22 Plaintiffs assert that Defendant tells employees that they are relieved of all work duties during their
23 meal periods, and that they are free to use their meal period time for whatever purpose they desire
24 but fail to state this for rest periods. As such, Plaintiffs contend that rest periods are not duty-free.

25 Further, Plaintiffs assert that Defendant does not provide employees with four rest periods
26 in shifts of over fourteen hours. Plaintiffs assert that employees work long hours that qualify for a
27 fourth rest period but that such rest period is not provided.

1 Defendant asserts that its rest period policy is lawful and that it provides employees with
2 rest periods in compliance with California law. Defendant alleges that if litigation continues it
3 would be able to show that it advised employees of the right to take rest periods within the timing
4 requirements set forth by California law and that it advised employees that their rest period did not
5 begin until they reached a suitable rest area. Defendant further asserts that employees were
6 provided the opportunity to take legally compliant rest periods, and employees are relieved of all
7 work duties during such rest periods. Defendant also contends that if litigation were to continue,
8 it would provide declarations from employees stating that they knew they were entitled to rest
9 periods in accordance with California law and that they took these rest periods in accordance with
10 California law. As such, a dispute exists as to whether Defendant provided rest periods to
11 employees in compliance with California law.

12 **ii. Meal Periods**

13 Plaintiffs contend that Defendant does not provide employees with meal periods that
14 conform with California law. Employers have an obligation under California law to provide
15 employees with thirty (30) minute meal periods. Under California Labor Code § 512(a), “[a]n
16 employer may not employ an employee for a work period of more than five hours per day without
17 providing the employee with a meal period of not less than 30 minutes” Cal. Lab. Code §
18 512(a). An employer “satisfies this obligation [to provide meal periods] if it relieves its employees
19 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
20 take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.”
21 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. Here, Plaintiffs contend
22 that Defendant’s time records show non-compliant meal periods.

23 In *Donohue v. AMN Services, LLC*, the California Supreme Court issued a decision,
24 wherein it ruled that time records showing late, short, or missed meal periods raises a rebuttable
25 presumption that the meal periods were not provided: “If time records show missed, short, or
26 delayed meal periods with no indication of proper compensation, then a rebuttable presumption
27 arises” that the meal periods were not provided in accordance with California law. *Donohue v.*
28 *AMN Services, LLC* (2021) 11 Cal.5th 58, 74. Plaintiffs contend that, here, the time records show

1 non-compliant meal periods. In these shifts, under *Donohue*, Plaintiffs contend that it is presumed
2 that meal period violations occurred.

3 Defendant asserts that its meal period policy is lawful and that it provides employees with
4 meal periods in compliance with California law. Accordingly, with a lawful meal period policy,
5 Defendant asserts that Plaintiff would have a difficult time certifying the Class as proposed.
6 Further, Defendant alleges that if litigation continues it would be able to show that it advised
7 employees of the right to take a meal period in compliance with California law. Defendant
8 contends that employees either took a lawful meal period or knowingly and voluntarily decided to
9 skip the meal period or take a late or short meal period. Defendant contends that this evidence
10 would rebut the presumption under *Donohue v. AMN Services, LLC*. Defendant also asserts that
11 the evidence in this case shows that it paid meal period premiums in shifts in which employees
12 were not provided with compliant meal periods. Thus, Defendant contends that to the extent an
13 employee was not provided the opportunity to take a legally compliant meal period, they were
14 provided a meal premium.

15 As such, disputes exist as to whether employees were provided meal periods in compliance
16 with California law; whether Defendant can rebut the presumption that arises when employees'
17 time records show late, short, and missed meal periods; and whether meal period premiums were
18 appropriately paid to employees.

19 **iii. Wage Statements**

20 Plaintiffs allege that employees are not provided with accurate itemized wage statements.
21 Section 226(a) provides that employers must furnish an accurate itemized statement in writing
22 showing: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece
23 rate units earned and applicable piece rate if the employee is paid on a piece rate basis; (4) all
24 deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is
25 paid; (7) the name of the employee and only the last four digits of his or her social security number
26 or employee identification number other than a social security number; (8) the name and address
27 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
28 period and corresponding number of hours worked at each hourly rate by the employee. Plaintiffs

1 allege that Defendant fails to provide employees with accurate itemized wage statements because
2 Defendant's wage statements do not meet California Labor Code § 226(a)'s requirements because
3 they do not itemize all regular time and overtime hours and do not list the accurate name of the
4 legal entity that is the employer on the detachable part of the check.

5 Defendant disputes this claim. Defendant contends California Labor Code § 226 does not
6 expressly require that a company's complete name or the name registered with the California
7 Secretary of State be included on wage statements and that the name it includes on wage statements
8 is sufficient to meet the requirements of California Labor Code § 226. In addition, Defendant
9 argues that employees can ascertain the required information, such as hours worked, using simple
10 math. Defendant relies on cases which hold that "[w]age statements comply with § 226(a) when a
11 plaintiff employee can ascertain the required information by performing simple math, using figures
12 on the face of the wage statement." *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554
13 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136).

14 Further, Defendant also asserts that any violation of California Labor Code § 226 was not
15 "knowing and intentional." See Cal. Lab. Code § 226(e) ("An employee suffering injury as a result
16 of a **knowing and intentional** failure by an employer" may recover damages") (emphasis added);
17 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195 ("Some statutory penalties are
18 imposed only if an employers' violation was 'willful' or 'knowing.' . . . [S]ection 226, subdivision
19 (e) penalizes an employer's 'knowing and intentional' failure to provide itemized wage statements
20 under section 226, subdivision (a)[.]"). Defendant further contends that employees cannot show
21 that they have suffered an injury because of any potential violation of California Labor Code §
22 226. Defendant contends that employees knew to talk to their manager or the Human Resources
23 department if they had any questions or concerns with their wage statements. As such, disputes
24 exist as to whether Defendant's wage statements violated California Labor Code § 226(a)(8),
25 whether any such violation was knowing and intentional, and whether employees suffered an
26 injury.

27 ///

28 ///

1 **iv. Failure to Reimburse for Business Expenses**

2 Plaintiffs allege that employees are not reimbursed for all expenses incurred for business
3 purposes. Under California Labor Code § 2802(a), “An employer shall indemnify his or her
4 employee for all necessary expenditures or losses incurred by the employee in direct consequence
5 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
6 even though unlawful, unless the employee, at the time of obeying the directions, believed them
7 to be unlawful.” Plaintiffs assert that Defendant requires employees to buy tools necessary in
8 performing their jobs when they are hired and are not reimbursed for this expense. Defendant
9 asserts that it provides all tools necessary for performing the work duties and that tools will be
10 bought for employees if they ask for the tool. Accordingly, there is a dispute over whether
11 employees were entitled to business expense reimbursement.

12 **v. Waiting Time Penalties**

13 Plaintiffs also pursued waiting time penalties. This claim is derivative of Plaintiffs’ meal
14 and rest period claims as Defendant failed to pay meal and rest period premiums. Should Plaintiffs’
15 meal and rest period claims fail, this claim would also fail.

16 In addition, Defendant contends that even if Plaintiffs were successful in their meal and
17 rest period claims, they would have to prove Defendant “willfully” failed to pay employees the
18 appropriate wages due upon separation of employment. “A willful failure to pay wages within the
19 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
20 an employee when those wages are due. However, a good faith dispute that any wages are due will
21 preclude imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520.
22 “A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense, based
23 in law or fact, which would preclude any recovery on the part of the employee. The fact that a
24 defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.”
25 *Id.* Defendant contends that any failure to pay wages due at the separation of employment was not
26 willful. Defendant argues that it would not be liable for waiting time penalties because a “good
27 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
28 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.

1 **IV. TERMS OF THE PROPOSED SETTLEMENT**

2 Under the terms of the settlement, Defendant will create a settlement fund of \$1,200,000.

3 **a. Deductions from the Settlement**

4 The Parties have agreed (subject to and contingent upon the Court's approval) that this
5 action be settled and compromised for the non-reversionary total sum of \$1,200,000 ("Gross
6 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
7 up to \$399,960 (33 1/3% of the GSA) to compensate Class Counsel for work already performed
8 and all work remaining to be performed in documenting the settlement, administering the
9 settlement, and securing Court approval; (b) litigation costs estimated at approximately, and not to
10 exceed, \$50,000;⁴ (c) a Service Payment Award to the named class representatives, Yovanik
11 Flores, Hung Nguyen, and Diego Bedoya Moreno, in a sum not to exceed \$10,000 each in
12 consideration for prosecuting this class action, serving as Class Representatives, work performed,
13 and risks undertaken for the payment of attorneys' fees and costs in the event they had been
14 unsuccessful in the matter; (d) claims administration fees and expenses to Phoenix Settlement
15 Administrators (hereinafter "Phoenix"), estimated not to exceed approximately \$30,000;⁵ and (e)
16 \$75,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or \$56,250 will be
17 provided to the LWDA, and 25%, or \$18,750, will be available for distribution to PAGA
18 Aggrieved Employees.⁶

19 **b. Calculation of the Settlement Payments to Class Members**

20 After all Court-approved deductions from the GSA, it is estimated that \$615,040 ("Net
21 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement

22 ⁴ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the
23 amount of actual costs incurred during the litigation of this case. Should the actual costs exceed
24 \$50,000, Plaintiffs will only seek reimbursement of costs up to \$50,000. Should the actual costs
be lower than \$50,000, the difference will be added to the Net Settlement Amount for disbursement
to Participating Class Members.

25 ⁵ Phoenix will present to the Court a declaration in conjunction with the final approval motion
26 outlining the costs of the settlement administration process. If the settlement administration costs
are lower than the amount allocated in the Agreement, the difference will be added to the Net
Settlement Amount for distribution to Participating Class Members.

27 ⁶ PAGA Aggrieved Employees are "[a]ll non-exempt, hourly employees of Defendant in the State
28 of California who worked within the PAGA Period." (Exhibit 1 at Section I, Paragraph 30, Page
5). The PAGA Period is February 24, 2021, through June 9, 2023. (Exhibit 1 at Section I,
Paragraph 33, Page 6).

1 payment, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions
2 of the settlement, each Participating Class Member will receive a proportionate share of the Net
3 Settlement Amount calculated according to the number of Workweeks worked during the Class
4 Period. A Participating Class Member's pro-rata share is equal to (i) the number of weeks he or
5 she worked for Defendant in California, in an hourly, non-exempt position, based on the Class
6 Data provided by Defendant,⁸ divided by (ii) the total number of weeks worked by all Participating
7 Class Members based on the same Class Data, which is then multiplied by the Net Settlement
8 Amount. One day worked in a given week will be credited as a work week for purposes of this
9 calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share
10 ties directly to the amount of weeks that he or she worked. (Exhibit 1 at Section III, Paragraph
11 61(A)(i), Page 11).

12 In addition, each PAGA Aggrieved Employee will receive a will receive a proportionate
13 share of the PAGA Payment that is allocated for distribution to PAGA Aggrieved Employees (i.e.,
14 \$18,750). The allocation of the PAGA Payment to each PAGA Aggrieved Employee, regardless
15 of any opt-out or objection, shall be calculated pro rata based on the total number of PAGA Pay
16 Periods each PAGA Aggrieved Employee worked during the PAGA Period.⁹ The pro-rata share
17 is equal to (i) dividing the total amount allocated to PAGA Aggrieved Employees by the total
18 number of PAGA Pay Periods worked by all PAGA Aggrieved Employees during the PAGA
19 Period and (ii) multiplying the result by each PAGA Aggrieved Employee's total PAGA Pay
20 Periods. The Settlement Administrator shall make these calculations based on the Class Data
21 provided by Defendant. (Exhibit 1 at Section III, Paragraph 62(A)(i), Page 12).

22
23 ⁷ Participating Class Members are "[a]ll Class Members who do not submit a valid and timely
24 request to exclude themselves from this Settlement." (Exhibit 1 at Section I, Paragraph 34, Page
25 6).

26 ⁸ Class Members who released claims through prior settlements will be entitled to the number of
27 workweeks they worked after the end of the prior settlement periods. (Exhibit 1 at Section III,
28 Paragraph 61(A)(ii), Page 11).

⁹ PAGA Aggrieved Employees who released PAGA claims through prior settlements will be
entitled to the number of workweeks they worked after the end of the prior settlement periods.
Stated differently, workweeks worked by PAGA Aggrieved Employees for which settlement funds
have already been paid through other prior settlements will not be included in this settlement.
(Exhibit 1 at Section III, Paragraph 62(A)(ii), Pages 12-13).

1 Under no circumstances will any portion of the \$1,200,000 settlement revert to Defendant
2 and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's
3 share of payroll taxes will be paid in addition to and outside of the GSA. (See Exhibit 1 at Section
4 I, Paragraph 20, Page 4).

5 The individual settlement payments will be divided into a "wage portion" to compensate
6 Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate
7 Participating Class Members for alleged interest and penalties. The wage portion will make up
8 20% of each Participating Class Members' Individual Settlement Share, and the non-wage portion
9 will make up 80% of each Participating Class Members' Individual Settlement Share. (Exhibit 1
10 at Section III, Paragraph 61(B), Pages 11-12). In addition, each PAGA Aggrieved Employees'
11 PAGA Settlement Share will be apportioned as 100% penalties. (See Exhibit 1 at Section III,
12 Paragraph 62(B), Page 13).

13 **c. Notice to the Class**

14 Within fourteen (14) calendar days of the date the Court enters an order granting
15 preliminary approval of the Settlement (the "Preliminary Approval Date"), Defendant shall
16 provide to the Administrator a list containing, for each Class Member, the following information
17 as available to Defendant: (1) first and last name; (2) last-known mailing address; (3) last-known
18 telephone number; (4) last-known email address (if any); (5) social security number; (6) hire and
19 termination dates; and (7) the total number of workweeks and PAGA Pay Periods during which
20 the Class Member performed actual work for Defendant during the Class Period. (Exhibit 1 at
21 Section III, Paragraph 65(c)(i), Page 17).

22 Within fourteen (14) calendar days after receipt of the Class Data, the Settlement
23 Administrator will mail via first-class regular U.S. Mail and email the Class Notice in English and
24 Spanish to all identified Class Members using the mailing and email address information provided
25 by Defendant and the results of the skip trace, and/or other reasonably available sources, methods,
26 and means, performed on all former Defendant employee Class Members. (Exhibit 1 at Section
27 III, Paragraph 65(c)(iii), Pages 17-18).

28 After notices are mailed, Class Members will have sixty (60) days to respond to the

1 settlement. (Exhibit 1 at Section I, Paragraph 41, Page 6). Class Members may respond to the
2 settlement by requesting to be excluded from it or objecting to it. Class Members can also file a
3 dispute as to the number of workweeks attributed to them.

4 **i. Requests for Exclusion**

5 Class Members can request to be excluded from the settlement by mailing a written request
6 for exclusion to the Settlement Administrator. The written request for exclusion must contain the
7 Class Member's name and telephone number¹⁰ and a statement that he/she wishes to exclude
8 himself/herself from the Settlement. (Exhibit 1 at Section III, Paragraph 65(E), Pages 19-20).
9 Requests for exclusion must be mailed to the Settlement Administrator. At final approval, the
10 Plaintiffs will present the Court with a report on all requests for exclusion received. A PAGA
11 Aggrieved Employee may not Opt-Out of releasing his or her PAGA Claims or from receiving his
12 or her allocated share of the Net PAGA Settlement Amount.

13 **ii. Objections to the Settlement**

14 Class Members who wish to object to the settlement can do so by mailing a written
15 objection to the Settlement Administrator. Any written objections shall state each specific
16 objection and any legal and factual support for each objection. The objection must also state the
17 Class Member's full name, address, and telephone number, and the words "Notice of Objection"
18 or "Formal Objection." Objections may also, but do not have to, include a list identifying
19 witness(es) the objector may call to testify at the Final Approval hearing and provide true and
20 correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. (Exhibit
21 1 at Section III, Paragraph 65(D), Page 19). At final approval, Plaintiff will provide the Court with
22 a single packet of objections submitted by Class Members, if any. Class Members who have
23 submitted a timely Request for Exclusion cannot also submit an objection to the settlement.

24 ///

25 ///

26
27

¹⁰ The Class Member's telephone number is necessary if the Settlement Administrator needs to
28 contact the Class Member about the request for exclusion which would occur, for example, if there
is a question about the authenticity of the signed request for exclusion.

1 **iii. Disputes**

2 If a Class Member who receives a Class Notice wishes to dispute the number of workweeks
3 listed on the Class Notice, the Class Member may notify the Settlement Administrator by mail or
4 telephone no later than the Response Deadline and should produce any available supporting
5 evidence, such as wage statements, offers of employment, termination letters, and/or other
6 employment records, to the Settlement Administrator. The documentation should provide evidence
7 of the dates the Class Member contends he or she worked for Defendant during the Class Period.
8 The Settlement Administrator shall then provide the documentation provided by the Class Member
9 to Counsel for Defendant. Defendant shall review its records, the documentation provided by the
10 Class Member, and shall provide information to the Settlement Administrator in response to any
11 such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement
12 Administrator shall evaluate the evidence submitted by the Class Member and make the decision
13 as to which dates should be applied. The determination by the Settlement Administrator shall be
14 final and binding. (Exhibit 1 at Paragraph 65(F), Pages 20-21).

15 **iv. Returned Notices**

16 If a Class Notice is returned because of an incorrect address, within five (5) business days
17 from receipt of the returned Notice, the Settlement Administrator will re-mail the Class Notice
18 using the forwarding address provided; if no forwarding address is provided, the Settlement
19 Administrator will conduct a search for a current address for the Class Member and then re-mail
20 the Class Notice to the Class Member. The Settlement Administrator will use the National Change
21 of Address Database and skip traces to attempt to find the current address. The Settlement
22 Administrator will be responsible for taking reasonable steps to trace the mailing address of any
23 Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable without
24 a forwarding address. These reasonable steps shall include, at a minimum, the tracking of all
25 undelivered mail, performing address searches for all mail returned without a forwarding address,
26 and promptly re-mailing to Class Members for whom new addresses are found. (Exhibit 1 at
27 Section III, Paragraph 65(c)(iv), Page 18).

28 If the Settlement Administrator is unable to locate a current address through a database

1 search or skip trace within five (5) business days from receipt of the returned Notice, the Settlement
2 Administrator shall call the last-known phone number provided by Defendant to attempt to obtain
3 an accurate address. If an address is obtained, the Settlement Administrator shall promptly re-mail
4 the Class Notice to the updated address. If the Class Notice is re-mailed, the Settlement
5 Administrator will note for its own records the date and address of each re-mailing. If the
6 Settlement Administrator is unable to locate an accurate address for the Class Member by
7 telephone, the Settlement Administrator will promptly provide the contact information of the Class
8 Member with the undeliverable Notice to Class Counsel. Class Counsel will provide this contact
9 information to perform a TLOxp search using the available contact information. The TLOxp
10 search performs a “deep skiptrace” of the Class Member and will have a greater chance of locating
11 a better address to provide the Class Member with Notice. (Exhibit 1 at Section III, Paragraph
12 65(c)(v), Page 18).

13 Class Members to whom Class Notices are resent after having been returned undeliverable
14 to the Settlement Administrator shall have an additional fourteen (14) calendar days beyond the
15 Response Deadline. (Exhibit 1 at Section I, Paragraph 41, Page 6).

16 **d. Distribution of Funds**

17 Provided there are no objections, Defendant shall fund the settlement within fifteen (15)
18 calendar days following the Effective Date.¹¹ (Exhibit 1 at Section I, Paragraph 23, Page 4; *see*
19 *also* Section III, Paragraph L(i), Page 23). Within ten (10) calendar days after the Defendant wires
20 the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net
21 Settlement Amount to be paid to Participating Class Members; (2) the Attorneys’ Fee Award and
22 Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class
23 Representative Enhancement Payments paid to the Class Representatives, as approved by the
24 Court; (4) the Administration Costs, as approved by the Court; (5) the PAGA Payment to the
25 LWDA and individual shares to PAGA Aggrieved Employees; and (6) Class Members’ portion of

26 _____
27 ¹¹ The “Effective Date” is the date upon which, the final approval of the settlement can no longer
28 be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the Court
grants final approval of the settlement, the date the Court enters judgment granting final approval
of the settlement. (Settlement Agreement, Section I, Paragraph 19, Page 4).

1 payroll taxes owed for amounts allocated as wages. (Exhibit 1 at Section III, Paragraph L(ii), Page
2 23).

3 Participating Class Members and PAGA Aggrieved Employees must cash or deposit their
4 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
5 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar
6 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
7 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become
8 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
9 uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice,
10 the Settlement Administrator will, within two hundred (200) calendar days after the checks are
11 mailed, cancel the checks. All funds associated with the Individual Settlement Share checks and
12 Individual PAGA Payment Share checks returned as undeliverable and funds associated with those
13 checks remaining un-cashed, shall be transmitted by the Settlement Administrator to a cy pres
14 beneficiary. The cy pres beneficiary selected by the Parties is The United Way. The United Way
15 is a non-profit organization that supports projects that benefit employees and applicants throughout
16 the State of California. The Parties agree that designating The United Way as the Cy Pres
17 Beneficiary will “further the purposes of the underlying class proceedings in this action and will
18 promote justice for all Californians.” (Exhibit 1 at Section III, Paragraph 65(N), Page 24; Section
19 I, Paragraph 16, Page 3).

20 **e. Release of Claims**

21 In exchange for an individual settlement payment, Participating Class Members will agree
22 to the following release:

23 Participating Class Members will release all claims that were pled or any claims
24 that could have been pled in the operative complaints based upon the facts alleged
25 in the Lawsuits including, but not limited to: (1) Failure to Pay All Straight Time
26 Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Authorize and Permit
27 Rest Periods; (4) Failure to Provide Meal Periods; (5) Failure to Provide Accurate
28 and Complete Wage Statements; (6) Failure to Timely Pay Wages Owed at
Termination (Labor Code §§ 201, 202, and 203); (7) Failure to Reimburse Business
Expenses; (8) Violation of Unfair Competition Law based upon violations of the
California Labor Code sections set forth herein; (9) Violation of the Temperature
Control Guidelines of the California Wage Orders; and (10) Failure to Timely Pay

Wages Due and Payable During Employment. The release will be as to the Released Parties.^[12] The release shall be for the Class Period.

(Exhibit 1 at Section I, Paragraph 38, Page 6).

In addition, all PAGA Aggrieved Employees will agree to the following release in exchange for a portion of the PAGA Settlement Share: Each PAGA Aggrieved Employee shall fully release and discharge Defendant and the Released Parties from any and all claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiffs' PAGA Letters and the operative complaints of the Lawsuits. The release will be as to the Released Parties. The release shall be for the PAGA Period. (Exhibit 1 at Section I, Paragraph 39, Page 6).

In addition, Plaintiffs have agreed to a general release of their claims. (See Exhibit 1 at Section III, Paragraph 68, Page 25).

f. Class Representative Service Payment Awards

Subject to the Court's approval, Plaintiffs seek a payment not to exceed \$10,000 each in consideration for a general release of all their claims against Defendant. The payment shall be made from the GSA. As just noted, Plaintiffs have agreed to a general release of their claims against Defendant.

Moreover, as representatives for the absent class members, Plaintiffs risked a potential judgment taken against them for attorneys' fees and costs if this matter had not been successfully concluded. Case law holds that a losing party is liable for the prevailing party's costs. *See Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000). And in some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, the prevailing party can be liable for attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been

¹² The "Released Parties" are Home Express Delivery Service, LLC, its subsidiaries, d/b/as, and all affiliated entities (including but not limited to C&B Delivery Service, Inc.), and each of its past or present officers, directors, employees, and agents which could be jointly liable with Defendant for the claims alleged. (Settlement Agreement, Section I, Paragraph 40, Page 6).

1 judgments like this entered against class representatives.¹³ The risk of payment of Defendant's
2 costs, alone, is a sufficient basis for an award of the requested service award. Few individuals are
3 willing to take this risk, and Plaintiffs championed a cause on behalf of others with potentially
4 huge monetary risks.

5 Additionally, the modern-day work force is mobile, with employees holding several jobs
6 over the span of their career. It is also true that prospective employers in this computer, high-tech
7 age "Google" and/or do extensive background checks and have access to court databases to see if
8 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiffs' conduct will not be
9 lost on a prospective employer who has to choose between an applicant who has never sued an
10 employer and one who has done so. The requested award far from compensates Plaintiffs for
11 opportunities they may lose in the future because of the exercise of a Constitutional right to Petition
12 the Courts for redress of a grievance.

13 **V. ARGUMENT**

14 **a. Class Action Settlements Are Subject to Court Review and Approval Under 15 the California Rules of Court**

16 Rule 3.769 requires court approval for class action settlements.¹⁴ "Before final approval,
17 the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules
18 of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of
19 class settlements:

20 (a) A settlement or compromise of an entire class action, or a cause of action in
21 a class action, or as to a party, requires the approval of the court after
22 hearing.

23 (c) Any party to a settlement agreement may serve and file a written notice of
24 motion for preliminary approval of the settlement. The settlement agreement
25 and proposed notice to class members must be filed with the motion, and

26 ¹³ See, e.g. *Koehl v. Verio, Inc.*, 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action
27 where Defendant prevailed at trial, the named Plaintiffs were held liable, jointly and severally for
28 the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, No. 05-
2320, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. Dec. 17, 2007) (a wage and hour misclassification
case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs
in the sum of \$56,788.).

¹⁴ The California Supreme Court also 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, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 the proposed order must be lodged with the motion.

2 Courts act within their discretion in approving settlements that are fair, not collusive, and
3 take into account “all the normal perils of litigation as well as the additional uncertainties inherent
4 in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167,
5 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452
6 U.S. 905.

7 **b. The Settlement Is Fair, Reasonable, and Adequate**

8 In deciding whether to approve a proposed class action settlement under Code of Civil
9 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
10 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
11 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-
12 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
13 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
14 objectors is small. *Dunk v. Ford Motor Co., supra*, at 1802. As the following shows, all of these
15 elements – with the exception of the percentage of objectors, which cannot be anticipated at this
16 stage of the litigation – bearing on the fairness of the proposed settlement are present here and the
17 Court’s grant of preliminary approval is therefore requested.

18 **i. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

19 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
20 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
21 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s
22 length settlement negotiations until the settlement was reached. The terms of the settlement are
23 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as
24 Exhibit 1. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks
25 of litigation and understands the benefit of the class receiving significant settlement funds
26 immediately as opposed to risking continued litigation in achieving class certification, preparing
27 for and conducting a trial, and/or an appeal that may take several more years to litigate.

28 ///

1 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the proposed settlement, and engaged in sufficient investigation, research and
4 discovery to support the settlement. The settlement was only possible following investigation,
5 discovery, and evaluation of Defendant’s policies and procedures, as well as the data produced for
6 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of
7 liability and potential damages. This litigation has reached the stage where “the Parties certainly
8 have a clear view of the strengths and weaknesses of their cases” sufficient to support the
9 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

10 **iii. Counsel for Both Parties Are Experienced in Similar Litigation**

11 Both Plaintiffs’ Counsel and Defendant’s Counsel are particularly experienced in wage and
12 hour employment law and class actions. Plaintiffs’ Counsel has significant experience in litigating
13 unpaid wages, unprovided meal and rest periods, and overtime claims. (Mara Dec. ¶¶ 2-11;
14 Declaration of Kane Moon ¶¶ 3-16). Indeed, Plaintiffs’ Counsel at Mara Law Firm, PC, was class
15 counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the
16 landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Mara
17 Dec. ¶ 5). Plaintiffs’ Counsel has prosecuted numerous wage and hour class action cases on behalf
18 of employees for California Labor Code violations and thus are experienced and qualified to
19 evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to
20 evaluate the viability of the defenses. This experience instructed Plaintiffs’ Counsel on the risks
21 and uncertainties of further litigation and guided their determination to endorse the proposed
22 settlement.¹⁵ Defendant’s Counsel, Seyfarth Shaw, has an extensive and nationally renowned labor
23 and employment practice. Counsel for Defendant specifically focuses on wage and hour class
24 action claims like this one, and has represented numerous employers in these types of action.
25 Accordingly, both Parties’ Counsel are experienced in wage and hour employment law and class
26 actions.

27

¹⁵ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Class Notice has been provided to the class and they have had an opportunity to respond. This
information will be provided to the Court in conjunction with the final approval motion.

1 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor in determining
3 whether the settlement “of the class members’ claims is reasonable in light of the strengths and
4 weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail,*
5 *Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los*
6 *Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength
7 of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

8 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
9 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
10 that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit
11 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
12 provided there is a record which allows “an understanding of the amount that is in controversy and
13 the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently,
14 “as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
15 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
16 reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*
17 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties’
18 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

19 **1. The Settlement is Fair and Reasonable Based on the Strengths**
20 **of Plaintiff’s Case and the Risks and Costs of Further Litigation**

21 The proposed settlement was only possible following significant discovery and an
22 evaluation of Defendant’s relevant policies and procedures, as well as the data that Defendant
23 produced for the putative class as referenced above. This permitted Class Counsel to engage in a
24 comprehensive analysis of liability and potential damages. The discovery conducted allowed
25 Plaintiffs to evaluate the strengths and weaknesses of their central theories of liability, which are
26 predicated on Plaintiffs’ claims that Defendant failed to provide compliant meal and rest periods,
27 failed to provide accurate itemized wage statements, and failed to reimburse for business expenses.
28 As explained herein, Defendant maintains that the discovery produced demonstrates that it would
succeed at both in denying class certification and on the merits.

1 Although, Plaintiffs believe this case is suitable for certification on the claimed bases that
2 there are company-wide policies that Plaintiffs contends violate California law and uniformly
3 affect the Class Members, Defendant's counterarguments raise uncertainties with respect to both
4 class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v.*
5 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's
6 sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to
7 certification of wage and hour claims.¹⁶ While remaining confident in the strengths of their claims,
8 all of these factors led Plaintiffs to discount the following maximum potential damage exposure.

9 **2. Maximum Potential Exposure as Estimated by Plaintiffs**

10 Based upon the data and documents provided by Defendant for mediation, Class Members
11 worked approximately 400,831 shifts during the Class Period. Employees average rate of pay is
12 approximately \$18.43 per hour.

13 Plaintiffs allege that Defendant failed to provide employees with rest periods in accordance
14 with California law because Plaintiff asserts that employees were not provided with net ten-minute
15 rest periods, were not provided with duty-free rest periods, and were not provided with a fourth
16 rest period in shifts of over fourteen hours. If Plaintiffs were to prevail on this claim for the entire
17 class period, Plaintiffs and the Class Members would be entitled to the following maximum
18 potential damages: \$7,387,315 (400,831 shifts x \$18.43 average hourly rate = \$7,387,315.33).
19 (Mara Dec. ¶ 16).

20 Plaintiffs allege that Defendant failed to provide employees with meal periods in
21 accordance with California law because Plaintiffs assert that Defendant's time records show meal
22 period violations. If Plaintiffs were to prevail on this claim for the entire class period, Plaintiffs
23 and the Class Members would be entitled to the following maximum potential damages:
24 \$2,983,319 (161,873 shifts with meal period violations x \$18.43 average hourly rate=

25 ¹⁶ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of
26 class claiming misclassification and ordering summary adjudication in favor of employees), *review*
27 *granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only);
28 *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class
claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing
denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming
denial of certification).

1 \$2,983,319.39). (Mara Dec. ¶ 20).

2 Plaintiffs allege that Defendant failed to provide accurate itemized wage statements. The
3 statute of limitations for Plaintiffs' wage statement claim is one year. Under California Labor Code
4 § 226(e)(1), the damages for breach of this section are fifty dollars (\$50) for the initial pay period
5 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
6 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). If
7 Plaintiffs were to prevail on this claim and assume that all employees who worked within the wage
8 statement statute of limitations are entitled to the maximum penalty of \$4,000, the damages would
9 be \$10,484,000 (\$4,000 x 2,621 employees = \$10,484,000). (Mara Dec. ¶ 23).

10 Plaintiffs allege that Defendant failed to reimburse employees for all business expenses.
11 Plaintiffs contend that Defendant owes Class Members reimbursements tools they had to purchase
12 to perform their jobs. Plaintiffs estimate that these tools cost approximately \$150. If Plaintiffs were
13 to prevail on this claim, Plaintiffs and the Class Members would be entitled to the following
14 maximum potential damages: \$438,750 (2,925 class members x \$150 = \$438,750). (Mara Dec. ¶
15 27).

16 If Plaintiffs were to prevail on their meal and rest period claims, they and the Class
17 Members may also be entitled to waiting time penalties. Plaintiffs calculate the potential maximum
18 exposure under his waiting time penalties cause of action as \$7,764,374 (1,510 former employees
19 in statute of limitations period x 30 days x 9.3 average shift length x \$18.43 average hourly rate =
20 \$7,764,374.70). (Mara Dec. ¶ 29). As these damages are derivative of Plaintiffs' meal and rest
21 claims, if Plaintiffs' meal and rest period claims fail, this claim also would fail.

22 Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain
23 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
24 reads, in part, as follows:

25 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per
26 pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

27 Plaintiffs allege that Defendant has seven (7) violations – unlawful rest and meal periods, failure
28

to timely pay wages, failure to follow the temperature control guidelines in the Wage Order, inaccurate wage statements, failure to reimburse for business expenses, and waiting time penalties – of the California Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA violations go back one year. Not all of the violations alleged by Plaintiffs occurred in every pay period. For example, Plaintiffs’ claims for waiting time penalties and failure to reimburse for business expenses only occurred in one pay period (when an employee’s employment with Defendant was terminated and when the employee was hired). Therefore, the maximum potential damages under Plaintiffs’ PAGA claim are:

37,882 pay periods x 5 violations (meal, rest, wage statements, temperature control, timely wages) x \$100 = \$18,941,000

2,621 pay periods x 2 violations (business reimbursements and waiting time penalties) x \$100 = \$524,200

Total maximum PAGA penalties: \$19,465,200

(Mara Dec. ¶ 34).

Thus, not taking into account any of its defenses or arguments, Plaintiffs estimated that if they were successful in their core claims, Defendant’s total exposure would be approximately \$21,293,384 [\$7,387,315 (rest period exposure) + \$2,983,319 (meal period exposure) + \$10,484,000 (wage statement exposure) + \$438,750 (reimbursement exposure) = \$21,293,384]. If Plaintiffs are successful in their meal and rest period claims, they may also be entitled to damages for waiting time penalties in the amount of \$7,764,374. If all of Plaintiffs’ claims are successful, they may also be entitled to PAGA penalties in the maximum amount of \$19,465,200.

3. Risks to Plaintiffs’ Claims

a. Plaintiffs’ Rest Period Claim is Subject to Risks at Class Certification and on the Merits

Plaintiffs’ rest period claim is subject to risks at certification and on the merits. As noted previously, Plaintiffs allege that employees are not provided with net ten-minute rest periods, duty-free rest periods, or fourth rest periods in shifts of over fourteen hours. Plaintiffs’ rest period claim is subject to risks at class certification. Defendant contends that the policies in its written policies are lawful and that employees are provided with rest periods in compliance with California law.

1 Defendant argues that its policy does not need to include the word “net” and that it provides
2 employees with net ten-minute rest periods. Defendant contends that it informs employees that
3 they are entitled to ten minutes of rest at a suitable rest area and that the time it takes to and from
4 a suitable rest area is not included in employees’ rest period time. Defendant also argues that it
5 provides employees with 5-minute grace periods for rest periods to ensure employees receive full
6 ten-minute rest periods. If litigation were to continue, Defendant asserts that it would provide
7 declarations from employees affirming that they received full rest periods and stating that
8 employees rest periods were fifteen, not ten, minutes in length. In addition, Defendant contends
9 that employees were relieved of all duties and employer controls during meal periods. Defendant
10 also contends that it provides employees with a fourth rest period if they work more than fourteen
11 hours in a shift. As such, Defendant argues that Plaintiff cannot show that employees did not
12 receive fourth rest periods in accordance with California law. Should litigation continue, and as
13 noted above, Defendant contends that it will provide declarations which show that employees did
14 receive compliant rest periods. Defendant asserts that at certification the Court would have to ask
15 each employee whether or not they received a rest period in compliance with California law which
16 would defeat certification because individualized issues would then predominate. (Mara Dec. ¶
17 17).

18 This claim is also subject to risks on the merits. Defendant contends that its rest period
19 policies and practices are lawful. If the case is certified, Defendant would file a motion for
20 summary judgment on this issue. There is a risk that the Court could agree with Defendant, which
21 would eliminate all exposure under this claim. In addition, Defendant asserts that if Plaintiffs were
22 only to prevail on their claim that Defendant failed to provide employees with fourth rest periods
23 when they worked shifts of over fourteen hours, a premium would only be owed in 880 shifts.
24 Defendant contends that this would significantly reduce Plaintiffs’ maximum exposure. (Mara
25 Dec. ¶ 18).

26 Based on these arguments, Plaintiffs estimate that they have a 50% chance of prevailing
27 on this claim. Therefore, Plaintiffs estimate the realistic value of this claim as \$3,693,657.50 (50%
28 of \$7,387,315). (Mara Dec. ¶ 19).

b. Plaintiffs' Meal Period Claim is Subject to Risks at Class Certification and on the Merits

Plaintiffs rely on *Donohue v. AMN Services, Inc.* (2021) 11 Cal.5th 58, 74, to show that Defendant does not provide meal periods in conformity with California law. Plaintiffs assert that Defendant's time records show that meal periods were late, short, or missed raising a rebuttable presumption that these meal periods were not provided in compliance with California law. Defendant contends that it can rebut the presumption that arises under *Donohue v. AMN Services, Inc.* Defendant asserts that at all times, it maintained legally compliant meal period policies, and provided its employees the opportunity to take a meal break as required by *Brinker*. Defendant asserts that the time records show over a 75% compliance rate for meal periods. Defendant asserts that to the extent an employee did not take a legally compliant meal period, it can show that employees voluntarily chose to take a short or late meal period or to skip the meal period entirely in these shifts. There is a risk that Defendant could meet its burden of proof in showing this by providing evidence that employees were provided with proper meal periods, and it was the employee's choice to take a late or short meal period or forgo taking a meal period altogether. Defendant asserts that its high, greater than 75% compliance rate is indicative of lawfully provided meal periods. Defendant contends that this percentage is actually higher because this percentage does not take into account shifts between 5 and 6 hours that are covered by meal period waivers. If these shifts are taken into consideration, Defendant asserts that the percentage of compliant meal periods would be much higher. Further, Defendant contends that even if Plaintiffs were to prevail, the potential damages would be lower than what Plaintiffs calculate because employees would not be entitled to meal period premiums for shifts in which a premium was already paid. (Mara Dec. ¶ 21).

For all of these reasons, Plaintiffs estimate that they have a 20% chance of prevailing on this claim at certification and on the merits. Therefore, Plaintiffs estimate the realistic value of this claim as \$596,663.80 (20% of \$2,983,319). (Mara Dec. ¶ 22).

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c. Plaintiffs' Wage Statement Claim is Subject to Risks on the Merits

Plaintiffs' wage statement claim is subject to risks on the merits. Plaintiffs allege that Defendant failed to provide accurate itemized wage statements because Defendant's wage statements fail to itemize the legal entity that is the employer and fail to itemize all regular and overtime hours. Defendant argues that California law does not expressly require that a company's complete name or the name registered with the California Secretary of State be included on wage statements. In addition, Defendant argues that employees can ascertain the required information, such as hours worked, using simple math. Defendant relies on cases which hold that "[w]age statements comply with § 226(a) when a plaintiff employee can ascertain the required information by performing simple math, using figures on the face of the wage statement." *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, 662 (citing *Morgan v. United Retail Inc.* (2010) 186 Cal.App.4th 1136). (Mara Dec. ¶ 24).

Defendant also asserts that any violation of California Labor Code § 226 was not "knowing and intentional." Defendant further contends that employees cannot show that they have suffered an injury as a result of any potential violation of California Labor Code § 226. Should litigation continue, the Parties would file cross motions for summary judgment on these issues. This claim is subject to the risk that the Court finds that entity name on Defendant's wage statements complies with California Labor Code § 226 and that employees can determine the hours worked by using simple math. Even if the Court finds in Plaintiffs' favor on this issue, this claim is still subject to the risks that the Court sides with Defendant that such a violation was not "knowing and intentional", and that Plaintiffs and the Class Members did not suffer any injury from this violation. (Mara Dec. ¶ 25).

As such, Plaintiffs estimate that they have a 70% chance of prevailing on this claim at certification and on the merits. Therefore, Plaintiffs estimate the realistic value of this claim as \$7,338,800 (70% of \$10,484,000). (Mara Dec. ¶ 26).

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d. Plaintiffs' Business Reimbursement Claim is Subject to Risks at Class Certification and on the Merits

Plaintiffs assert that employees are required to purchase tools to perform their job duties. Plaintiffs' business reimbursement claim is subject to risks at class certification and on the merits. Defendant argues that it provides all necessary tools to employees and that employees do not have to purchase any tools on their own. Defendant argues that there are no policies, whether formal or informal, that requires employees to do so. As such, Defendant argues that at certification, the Court would have to ask each employee whether or not they thought they had to purchase tools to perform their job duties. Defendant contends that doing so would defeat certification. In addition, Defendant contends that it provides all necessary tools to employees and that if employees need a specific tool, they can tell Defendant and Defendant will purchase it for them. As such, Defendant contends there are not damages associated with this claim. Plaintiffs estimate that they have a 20% chance of prevailing on this claim. Therefore, Plaintiffs estimate the realistic value of this claim as \$87,750 (20% of \$438,750). (Mara Dec. ¶ 28).

e. Plaintiffs' Waiting Time Claim is Subject to Risks on the Merits

Plaintiffs also pursued a claim for waiting time penalty claims. This claim is derivative of Plaintiffs' meal and rest period claims. Should Plaintiffs' meal and rest period claims fail or not be certified, this claim would also fail. As noted above, Plaintiffs' meal and rest period claims are subject to risks at certification and on the merits. This claim is subject to those same risks. (Mara Dec. ¶ 30).

Further, this claim is also subject to its own risks on the merits independent of the risks of Plaintiffs' meal and rest period claims. This is because this claim has a "willful" component. "Some statutory penalties are imposed only if an employers' violation was 'willful' or 'knowing.' . . . [S]ection 203 penalizes an employer that 'willfully' fails to pay wages due under *section 201* or *202*["] *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1195. Defendant contends that even if Plaintiffs are successful in their meal and rest period claims, they would have to prove Defendant "willfully" failed to pay Class Members appropriate wages due upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code Section 203 occurs

1 when an employer intentionally fails to pay wages to an employee when those wages are due.”
2 Cal. Code Regs. Tit. 8 § 13520; *see also Amaral, supra*, 163 Cal.App.4th at 1201 (“The settled
3 meaning of ‘willful,’ as used in *section 203*, is that an employer has intentionally failed or refused
4 to perform an act which was required to be done.”). “However, a good faith dispute that any wages
5 are due will preclude imposition of waiting time penalties under Section 203.” Cal. Code Regs.
6 Tit. 8 § 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer presents
7 a defense, based in law or fact, which would preclude any recovery on the part of the employee.
8 The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith
9 dispute did exist.” *Id.* (Mara Dec. ¶ 31).

10 Defendant contends that any failure to pay wages due at the separation of employment was
11 not willful. Defendant argues that it would not be liable for waiting time penalties because a “good
12 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral,*
13 *supra*, 163 Cal.App.4th at 1201. (Mara Dec. ¶ 32).

14 Due to this, Plaintiffs estimate that they have a 40% chance of prevailing on this claim.
15 Therefore, Plaintiffs estimate the realistic value of this claim as \$3,105,749.60 (40% of
16 \$7,764,374). (Mara Dec. ¶ 33).

17 **f. Plaintiffs’ PAGA Exposure would Likely be Reduced by**
18 **the Court**

19 Plaintiffs’ PAGA claims are subject to the same risks on the merits as Plaintiffs’ non-
20 PAGA claims. Section 2699, subdivision (e)(2) provides that “[i]n any action by an aggrieved
21 employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may
22 award a lesser amount than the maximum penalty amount specified by this part if, based on the
23 facts and circumstances of the particular case, to do otherwise would result in an award that is
24 unjust, arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*
25 (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
26 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay
27 the maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th
28 1112, 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has
taken its obligations to comply with the law seriously. *Id.* Defendant argues that if the case were

1 to continue in litigation, it would be able to show that it took its obligations to comply with the
2 law seriously. As such, if Plaintiffs are able to prevail on the merits of their PAGA claims, it is
3 likely that the Court would reduce the maximum penalty allowed. (Mara Dec. ¶ 35).

4 As a majority of Plaintiffs' PAGA claims are based on the same alleged unlawful conduct
5 as their class claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as
6 Plaintiffs' class claims. The likelihood of the Court reducing the PAGA penalties awarded to
7 Plaintiffs and the aggrieved employees – assuming liability is proven as to each of Plaintiffs'
8 claims – is higher in this case where these same individuals may also be receiving money for the
9 same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal.
10 Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because
11 the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying
12 Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court
13 has discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §
14 2699(e)(2), Plaintiffs recognize that the potential PAGA penalties are highly uncertain.”).
15 Plaintiffs must take into consideration the risks their underlying claims faced, as well as the risk
16 that the Court would likely reduce the amount of PAGA penalties awarded. (Mara Dec. ¶ 36).

17 Plaintiffs' PAGA claims face the risk that the Court will likely reduce Plaintiffs' PAGA
18 exposure for the reasons outlined above. It should be noted that all Aggrieved Employees are also
19 Class Members. Plaintiffs estimate that their PAGA exposure would likely be reduced by 70% to
20 \$5,839,560 (30% of \$19,465,200). (Mara Dec. ¶ 37).

21 **g. Defendant's Adjusted Exposure**

22 For the reasons just outlined, Defendant's adjusted exposure of non-PAGA claims is
23 approximately \$20,662,179 [\$3,693,657 (rest periods) + \$596,663 (meal periods) + \$7,338,800
24 (wage statements) + \$87,750 (business reimbursements) + \$3,105,749 (waiting time penalties) +
25 \$5,839,560 (PAGA) = \$20,662,179]. This exposure is comprised of \$4,290,320 for wages and
26 \$16,371,859 for non-wages. As such, wages comprise approximately 21% of the exposure and
27 penalties comprise approximately 79% of the exposure. This split is in line with the tax split
28 allocated to Participating Class Members' Individual Settlement Shares which is 20% wages and

1 80% non-wages.

2 **4. The Settlement Amount of \$1,200,000 is Reasonable**

3 In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
4 settlement amount of \$1,200,000 – with an average settlement share amount estimated at \$210.27
5 – is a reasonable and fair settlement amount. (Mara Dec. ¶ 38).

6 It should be noted that a settlement is not judged solely against what might have been
7 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the
8 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91
9 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;
10 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by
11 the proposed settlement is substantially narrower than it would be if the suits were to be
12 successfully litigated, this is no bar to a class settlement because the public interest may indeed be
13 served by a voluntary settlement in which each side gives ground in the interest of avoiding
14 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688
15 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the
16 potential recovery does not...render the settlement inadequate or unfair”); *see also In re*
17 *Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, *21 (noting that
18 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
19 attorneys’ fees was higher than median percentage for recoveries in shareholder class action
20 settlements, averaging 2.2%-3% from 2002 through 2006).

21 **c. Provisional Certification Should be Granted**

22 Under California law, a class action is appropriate when the class is ascertainable and there
23 is “a well defined community of interest in the questions of law and fact involved affecting the
24 parties to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code
25 of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of
26 the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims,
27 adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P.
28 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted

1 that while a court must certify a class for settlement purposes if a class has not already been
2 certified, “it is well established that trial courts should use different standards to determine the
3 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
4 standard of scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior*
5 *Court* (2013) 113 Cal.App.4th 836, 859 citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
6 1794, 1807, fn. 19.

7 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, each of
8 these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224,
9 237-38. Plaintiffs seek approval of the following Class for settlement purposes only: All non-
10 exempt, hourly employees of Defendant in the State of California from April 13, 2017, through
11 June 9, 2023, who did not previously release their claims against Defendant.

12 **i. The Proposed Settlement Class is Ascertainable**

13 Plaintiffs contend that the proposed Class is ascertainable because of all of the Class
14 Members have worked for Defendant as non-exempt employees and have been identified through
15 Defendant’s own records, such as employee and payroll files. *See Rose v City of Hayward* (1981)
16 126 Cal.App.3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be
17 readily identified without unreasonable expense or time by reference to official records.”); *Sevidal*
18 *v. Target Corp.* (2010) 189 Cal.App.4th 905, 919 (“[c]lass members are ‘ascertainable’ where they
19 may be readily identified without unreasonable expense or time by reference to official [or
20 business] records.”). Thus, the ascertainability requirement is met.

21 **ii. The Proposed Settlement Class is Sufficiently Numerous**

22 The numerosity requirement is met if the class is so large that joinder of all members would
23 be impracticable. *Gay v. Waiters’ & Dairy Lunchmen’s Union* (N.D. Cal. 1980) 489 F. Supp. 282,
24 *aff’d* (9th Cir. 1982) 694 F.2d 531. “There is no set number required to maintain a class action,
25 and the statutory test is whether a class is so numerous that ‘it is impracticable to bring them all
26 before the court.’” *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213,
27 1223 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior*
28 *Court* (1995) 44 Cal.2d 574 (upholding a class of ten members). “The numerosity requirement is

1 more readily met when a class contains employees suing their present employer . . . This is because
2 class members may be unwilling to sue their employer individually out of fear of retaliation.”
3 *Romero v. Producers Dairy Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the
4 California Supreme Court, “fear of retaliation for individual suits against an employer is a
5 justification for class certification in the arena of employment litigation, even when it is otherwise
6 questionable that the numerosity requirements were satisfied . . . It needs no argument to show that
7 fear of economic retaliation might often operate to induce aggrieved employees quietly to accept
8 substandard conditions.” *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460 (citation omitted),
9 overruled on other grounds in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348.

10 Here, Defendant’s records show that they proposed Class has approximately 2,925
11 members. Plaintiffs contend that joinder of all Class Members is impracticable and, therefore, a
12 class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030
13 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few
14 as 28 is acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing
15 *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that
16 classes of over forty (40) individuals are numerous enough to meet the numerosity requirement.
17 *See Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class
18 is comprised of approximately 2,925 members and is sufficient to satisfy the numerosity
19 requirement.

20 **iii. The Commonality Requirement is Met**

21 The commonality requirement is met if there are questions of law and fact common to the
22 class. *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
23 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
24 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members
25 to individually establish eligibility and damages does not mean individual fact questions
26 predominate.’” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334.
27 Commonality exists if there is a predominant common legal question regarding how an employer’s
28 policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536

(2008) (“[T]he common legal question remains the overall impact of Diva’s policies on its drivers.”). Whether Plaintiffs are likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is “essentially a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v. Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

Here, Plaintiffs contend that the proposed Class Members’ claims all stem from the same allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiffs seek the same legal remedies under state law on behalf of themselves and all Class Members. As liability as to all Class Members is predicated on the same policies and practices, which Plaintiffs allege violates California law, the commonality requirement has been satisfied.

iv. The Typicality Requirement is Met

The typicality requirement is met if the claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiffs contend that their claims are typical of the Class Members’ claims because they arise from the same factual basis and are based on the same legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiffs allege that Defendant’s policies applied to all Class Members. Factual differences may exist between Plaintiffs’ and the Class Members so long as the claims arise from the same events or course of conduct and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*, 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.] As such, the typicality requirement is satisfied.

v. The Adequacy Requirement is Met

The adequacy requirement is met if Plaintiffs have no interests adverse to the interests of the proposed Class Members and is committed to vigorously prosecuting the case on behalf of the

1 class. *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442,
2 450-51. Plaintiffs contend those standards are met here. Plaintiffs do not have any conflicts of
3 interest with the Class. They have been and continue to be committed to vigorously prosecuting
4 this case. If any Class Member wishes to opt-out of the Settlement, he or she may do so. Therefore,
5 there is no conflict of interest between Plaintiffs and the Class Members.

6 **vi. Notice to Class Members Complies with California Rule of Court
3.769(f)**

7 California Rule of Court 3.769(f), provides:

8 If the court has certified the action as a class action, notice of the final approval
9 hearing must be given to class members in the manner specified by the court. The
10 notice must contain an explanation of the proposed settlement and procedures for
class members to follow in filing written objections to it and in arranging to appear
at the settlement hearing and state any objections to the proposed settlement.

11 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises the
12 class of their rights to participate in the settlement, how to and when to object to or request
13 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
14 proposed Class Notice is attached as Exhibit A to the Agreement.

15 **VI. CONCLUSION**

16 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the class
17 and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
18 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
19 should be preliminarily approved by the Court, the class should be conditionally certified for
20 purposes of settlement only, and the Class Notice should be approved. Plaintiffs also respectfully
21 request the Court set a final approval hearing date of October 31, 2023.

22
23
24 Dated: May 19, 2023

MARA LAW FIRM, PC

25
26 
27 David Mara, Esq.
28 Jill Vecchi, Esq.
Representing Plaintiffs