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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**
12 **(UNLIMITED JURISDICTION)**

14 SHELIA CROMWELL, AARON SALAZAR,
15 and ANDREW FORREST, on behalf of
16 themselves, all others similarly situated, and as
17 “aggrieved employees” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorney General Act of 2004,,
18

19 *Plaintiff(s),*

20 vs.

21 DESERT CREMATION SOCIETY, INC., a
California corporation; ~~WIEFELS & SON, a~~
22 ~~California corporation;~~ WIEFELS & SON II,
INC., a California corporation; ~~WIEFELS & SON II,~~
23 ~~INC., a California corporation;~~ and DOES 1–50,
24 inclusive,

25 *Defendant(s).*

Case No. CIVSB2116331

**PLAINTIFFS’ MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: February 13, 2024
Hearing Time: 1:30 p.m.
Hearing Dept.: S17, The Honorable
Joseph T. Ortiz

Action filed: June 04, 2021



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiffs Aaron Salazar, Shelia Cromwell, and Andrew Forrest (collectively “Plaintiffs”)
5 submits this memorandum of points and authorities in support of his unopposed motion for
6 preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (the
7 “Settlement”)², which provides for a Gross Settlement Amount (“GSA”) of \$500,000.00 in
8 compromise of all disputed claims on behalf of non-exempt decedent transport drivers (also
9 known as transport specialists), but only for the time period that the employee performed transport
10 services during the period of October 12, 2017 through October 27, 2023. Through this Motion,
11 Plaintiff respectfully requests for this Court to (1) provisionally certify the below-defined Class
12 for settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the
13 Settlement; (3) preliminarily appoint Plaintiffs Aaron Salazar, Shelia Cromwell, and Andrew
14 Forrest as Class representatives; (4) appoint David Spivak of The Spivak Law Firm and Walter
15 L. Haines of United Employees Law Group as Class Counsel; (5) approve the proposed notice
16 procedures and related forms; and (6) schedule a final approval hearing.

17 This Court should grant Plaintiffs’ motion because: (1) for settlement purposes, the
18 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
19 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
20 reasonableness, and adequacy; (3) for settlement purposes, Plaintiffs are adequate to serve as
21 Class representatives; (4) Plaintiffs’ attorneys are adequate to serve as Class Counsel; (5) the
22 proposed notice procedures, and related forms, fully comport with due process and adequately
23 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to allow
24 Settlement Class Members an opportunity to be heard regarding the Settlement and to give it
25 finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiffs’ Motion
26 in its entirety and preliminarily approve the Settlement.

27 **II. BACKGROUND**

28 Defendants operate in the crematory business / industry. DS, ¶ 11. Defendants employed
Plaintiffs Aaron Salazar, Shelia Cromwell, and Andrew Forrest in California as driver/transport
specialist during the Class Period. *Id.*

² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
which is submitted herewith under a separate cover.



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1 **A. The Claims and Procedural History**

2 On March 17, 2021, Plaintiff Shelia Cromwell (“Plaintiff Cromwell”) notified Defendants
3 and the California Labor and Workforce Development Agency (“LWDA”), pursuant to the
4 California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*
5 (“PAGA”), of alleged Labor Code violations committed by Defendants. On March 19, 2021,
6 Plaintiff Aaron Salazar (“Plaintiff Salazar”) notified the LWDA, pursuant to PAGA, of alleged
7 Labor Code violations committed by Defendants. On April 5, 2021, Plaintiff Andrew Forest
8 (“Plaintiff Forest”) notified the LWDA, pursuant to PAGA, of alleged Labor Code violations
9 committed by Defendants. DS, ¶ 12, Exs. 2-4.

10 On June 4, 2021, Shelia Cromwell filed a Class Action Complaint in the San Bernardino
11 County Superior Court, Case No. CIVSB2116331, against Defendants on behalf of herself and
12 others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All
13 Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to
14 Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab.
15 Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage
16 Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§
17 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 13, Ex. 5. On
18 or about June 14, 2021, Aaron Salazar and Andrew Forrest filed a PAGA action against
19 Defendants Desert Cremation Society, Inc; Wiefels & Son; Wiefels & Son II, Inc.; and Wiefels
20 FD, Inc. in San Bernardino Superior Court (case number CIVSB2116545). Ex. 6. On or about
21 August 17, 2021, Shelia Cromwell filed a First Amended Complaint in the Action to make a
22 typographic correction in Plaintiff Cromwell’s first name from “SHEILA” to “SHELIA.” Ex.7.
23 On October 12, 2021, Plaintiff Cromwell filed a Second Amended Complaint adding Plaintiffs
24 Salazar and Forrest and a claim under PAGA. DS, ¶ 13, Ex. 8. On November 11, 2021,
25 Defendants filed an answer to Plaintiffs’ Second Amended Complaint. DS, ¶ 13, Ex. 9. On
26 November 17, 2021, and pursuant to a tolling agreement between the parties, Plaintiffs filed a
27 request for dismissal without prejudice of Defendants Wiefels & Son and Weifels FD, Inc.
28 Defendants deny all of Plaintiffs’ allegations and strongly contend that their wage and hour
policies, practices and procedures are fully compliant with all applicable laws. DS, ¶ 13.

B. Sampling

 On April 14, 2022, Plaintiffs requested that Defendants informally disclose documents
and data to enable Plaintiffs to prepare for settlement discussions, including the number of



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1 putative class members and aggrieved employees, the number of paychecks and workweeks for
2 the various limitations periods applicable to Plaintiffs' claims. DS, ¶ 14. Plaintiffs also requested
3 a reasonable, randomly selected sample of Defendants' time, payroll, and expense records, and
4 related personnel records. *Id.* Finally, Plaintiffs requested Defendants' written policies applicable
5 to the claims at hand and asked Defendants to identify any and all comparable claims against it.

6 The Parties thereafter engaged in an informal, voluntary exchange of information in the
7 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
8 Plaintiffs' entire personnel files (including policies and agreements they signed and
9 acknowledged) and copies of their relevant company written policies. DS, ¶ 15.

10 The Defendants disclosed that there have not been any comparable claims against them.
11 DS, ¶ 20.

12 Defendants contend that that they employed 169 putative class members during the period
13 of July 6, 2017 to February 28, 2023. Defendants produced the records of 20.00% of the putative
14 class members for the period of July 06, 2017 to February 28, 2023. There were records for 35
15 employees in the sample. Defendants' counsel selected the sample. Defendants' counsel notified
16 Plaintiffs' counsel that the sample was selected randomly by his clerks. Also, that sample selected
17 was not based on dates of employment or workweeks. The sample consisted of pay stubs, time
18 punches, and related records. DS, ¶ 16.

19 Plaintiffs retained Billy Bonilla, a data analyst, to analyze the sample. Plaintiffs also
20 employed the Raosoft³ Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
21 determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004)
22 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
23 margin of error of 32.4 percent was "unacceptable whereas the *Duran* court found a relative
24 margin of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence
25 level of 95%, and a population size of 169, the Raosoft Sample Size Calculator recommended a

26 ³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
27 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey software
28 programs for information gathering and analysis. The family of survey software supports data
collection and reporting for any form-based data. Support is for web-surveys and forms, email
distribution, diskette, PDA, laptop or pen-based: all types of distribution." The Raosoft webpage
advertises that is it "database web survey software for gathering information."
<http://www.raosoft.com/>. It also advertises, "The parameters of the sample size calculation are
something that you choose." <http://www.raosoft.com/suggestreading.html>.



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sample of 9. DS, ¶ 17, **Exhibit 10** (Raosoft Sample Size Calculator results print-out). Thus, the sample population that Plaintiffs' data analyst evaluated is statistically reliable. *Id.*

C. Mediation

On June 29, 2023, following much of the foregoing informal discovery and exchange of information, the Parties participated in a mediation session presided over by Mediator Deborah Saxe, an experienced class action mediator. During the mediation, the Parties had a full day of productive negotiations and reached agreement on a class-wide settlement after the mediation session. During the mediation sessions, each side, represented by his / her / its respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement. DS, ¶ 18.

D. Defendants' Financial Condition

At the mediation, it became clear that Defendants had insufficient resources to cover the full extent of liability. DS ¶ 19. As part of the settlement negotiations, Defendants disclosed their tax returns, profit and loss statements, and related information for 2020 and 2021. *Id.* The information provided was sufficient to demonstrate the financial condition of the Defendants and that they will unlikely be able to afford payment of a larger amount than the Settlement amount. Based on such records, Plaintiffs, on their own behalf and on behalf of the Class Members, have agreed to settle the lawsuit on the terms set forth in the Settlement. *Id.*

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Settlement Class as all of Defendants' non-exempt decedent transport drivers (also known as transport specialists), but only for the time period that the employee performed transport services, during the Class Period. Settlement, ¶ 1.5. The Class Period is October 12, 2017 through October 27, 2023. *Id.*, ¶ 1.12. Settlement ¶ of Defendants' non-exempt decedent transport drivers, but only for the time period that the employee performed transport services in California during the PAGA Period. The "PAGA Period" begins March 17, 2020 and ends October 27, 2023. *Id.*, ¶ 1.32.

B. Monetary Terms

Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$500,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline



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1 stated in Paragraph 6.1 of the Settlement Agreement. The Administrator will disburse the entire
2 Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved
3 Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount
4 will revert to Defendants. *Id.*, ¶ 3.1.

5 The Administrator will make and deduct the following payments from the Gross
6 Settlement Amount, in the amounts specified by the Court in the Final Approval:

7 Class Representative Service Payments to the Class Representatives of not more than
8 \$15,000.00 each (in addition to any Individual Class Payments and any Individual PAGA
9 Payments the Class Representatives are entitled to receive as Participating Class Members).
10 Defendants will not oppose Plaintiffs' request for a Class Representative Service Payments that
11 do not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class
12 Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative
13 Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court
14 approves a Class Representative Service Payment less than the amount requested, the
15 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
16 pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full
17 responsibility and liability for employee taxes owed on the Class Representative Service
18 Payments. *Id.*, ¶ 3.2.1.

19 Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be
20 \$166,666.66 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00.
21 Defendants will not oppose requests for these payments provided that they do not exceed these
22 amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and
23 Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval
24 Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
25 Expenses Payment less than the amounts requested, the Administrator will allocate the remainder
26 to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any
27 other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment
28 and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel
Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class
Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees
Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless,



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1 and indemnifies Defendants, from any dispute or controversy regarding any division or sharing
2 of any of these Payments. *Id.*, ¶ 3.2.2.

3 An Administrator expenses Payment not to exceed \$10,000.00 except for a showing of
4 good cause and as approved by the Court. To the extent the Administration Expenses are less or
5 the Court approves payment less than \$10,000.00, the Administrator will retain the remainder in
6 the Net Settlement Amount. *Id.*, ¶ 3.2.3.

7 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
8 the total number of Work Weeks worked by all Participating Class Members during the Class
9 Period and (b) multiplying the result by each Participating Class Member's Work Weeks. *Id.*, ¶
10 3.2.4.

11 20.00% of each Participating Class Member's Individual Class Payment will be allocated
12 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
13 withholding and will be reported on an IRS W-2 Form. The 80.00% of each Participating Class
14 Member's Individual Class Payment will be allocated to settlement of claims for interest and
15 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
16 withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
17 responsibility and liability for any employee taxes owed on their Individual Class Payment. *Id.*, ¶
18 3.2.4.1.

19 Non-Participating Class Members will not receive any Individual Class Payments. The
20 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
21 Amount for distribution to Participating Class Members on a pro rata basis. *Id.*, ¶ 3.2.4.2.

22 PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement
23 Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00)
24 allocated to the Individual PAGA Payments. *Id.*, ¶ 3.2.5.

25 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
26 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00 by the total
27 number of PAGA Paychecks of all Aggrieved Employees but only for the time period that the
28 employee performed transport services during the PAGA Period and (b) multiplying the result by
each Aggrieved Employee's PAGA Paychecks. Aggrieved Employees assume full responsibility
and liability for any taxes owed on their Individual PAGA Payment. *Id.*, ¶ 3.2.5.1.



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1 If the Court approves PAGA Penalties of less than the amount requested, the
2 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will
3 report the Individual PAGA Payments on IRS 1099 Forms. Settlement, ¶¶ 3.1 and 3.2.

4 **C. Timing of Payments**

5 Based on a review of their records to date, Defendants estimate there are 100 Class
6 Members who collectively worked a total of 5,000.00 Work Weeks, and 53 Aggrieved Employees
7 who received a total 1,157 of PAGA Paychecks. *Id.*, ¶ 9.

8 Not later than 15 days after the Court grants Preliminary Approval of the Settlement,
9 Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a
10 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
11 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement
12 and for no other purpose, and restrict access to the Class Data to Administrator employees who
13 need access to the Class Data to effect and perform under this Agreement. Defendants have a
14 continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted
15 class member identifying information and to provide corrected or updated Class Data as soon as
16 reasonably feasible. Without any extension of the deadline by which Defendants must send the
17 Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts,
18 in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class
19 Data. *Id.*, ¶ 4.2.

20 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
21 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
22 Administrator no later than twelve months after the Effective Date. *Id.*, ¶ 4.3.

23 Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator
24 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA
25 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the
26 Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.
27 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
28 Payment and the Class Representative Service Payments shall not precede disbursement of
Individual Class Payments and Individual PAGA Payments. *Id.*, ¶ 4.4.

The Administrator will issue checks for the Individual Class Payments and/or Individual
PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.



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1 The face of each check shall prominently state the date (not less than 180 days after the date of
2 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
3 the void date. The Administrator will send checks for Individual Settlement Payments to all
4 Participating Class Members (including those for whom Notice Packet was returned undelivered).
5 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
6 including Non-Participating Class Members who qualify as Aggrieved Employees (including
7 those for whom Notice Packet was returned undelivered). The Administrator may send
8 Participating Class Members a single check combining the Individual Class Payment and the
9 Individual PAGA Payment. Before mailing any checks, the Administrator must update the
recipients' mailing addresses using the National Change of Address Database. *Id.*, ¶ 4.4.1.

10 The Administrator must conduct a Class Member Address Search for all other Class
11 Members whose checks are returned undelivered without USPS forwarding address. Within 7 days
12 of receiving a returned check the Administrator must re-mail checks to the USPS forwarding
13 address provided or to an address ascertained through the Class Member Address Search. The
14 Administrator need not take further steps to deliver checks to Class Members whose re-mailed
15 checks are returned as undelivered. The Administrator shall promptly send a replacement check
16 to any Class Member whose original check was lost or misplaced, requested by the Class Member
prior to the void date. *Id.*, ¶ 4.4.2.

17 For any Class Member whose Individual Class Payment check or Individual PAGA
18 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
19 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
20 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
21 California Code of Civil Procedure Section 384, subd. (b). *Id.*, ¶ 4.4.3.

22 The payment of Individual class Payments and Individual PAGA Payments shall not
23 obligate Defendants to confer any additional benefits or make any additional payments to Class
24 Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
Settlement, ¶¶ 4.1, 4.2, 4.3, and 4.4.

25 **D. Calculation of Settlement Shares**

26 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
27 the total number of Work Weeks worked by all Participating Class Members during the Class
28



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1 Period and (b) multiplying the result by each Participating Class Member's Work Weeks.
2 Settlement, ¶ 3.2.4.

3 The Administrator will calculate each Individual PAGA Payment by (a) dividing the
4 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00 by the total
5 number of PAGA Paychecks of all Aggrieved Employees but only for the time period that the
6 employee performed transport services during the PAGA Period and (b) multiplying the result by
7 each Aggrieved Employee's PAGA Paychecks. Aggrieved Employees assume full responsibility
8 and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.5.1.

9 **E. Apportionment of Settlement Shares**

10 20.00% of each Participating Class Member's Individual Class Payment will be allocated
11 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
12 withholding and will be reported on an IRS W-2 Form. The 80.00% of each Participating Class
13 Member's Individual Class Payment will be allocated to settlement of claims for interest and
14 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
15 withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full
16 responsibility and liability for any employee taxes owed on their Individual Class Payment.
17 Settlement, ¶ 3.2.4.1.

18 **F. The Releases**

19 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
20 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
21 Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as
22 follows:

23 Plaintiffs and their respective former and present spouses, representatives, agents,
24 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
25 Parties from all claims, transactions, or occurrences that occurred during the Class Period,
26 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
27 based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or
28 reasonably could have been, alleged based on facts contained in the Operative Complaint,
Plaintiffs' PAGA Notice, or ascertained during the Action and released under 6.2, below.
("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this
Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits,
social security benefits, workers' compensation benefits that arose at any time, or based on



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1 occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or
2 law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true
3 but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects,
4 notwithstanding such different or additional facts or Plaintiffs' discovery of them. *Id.*, ¶ 6.1.

5 For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the
6 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:
7 A general release does not extend to claims that the creditor or releasing party does not know or
8 suspect to exist in his or her favor at the time of executing the release, and that if known by him
9 or her would have materially affected his or her settlement with the debtor or Released Party. *Id.*,
10 ¶ 6.1.1.

11 All Participating Class Members, on behalf of themselves and their respective former and
12 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
13 Released Parties from all claims stated in the Operative Complaint and those based solely upon
14 the facts alleged in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement,
15 Participating Class Members do not release any other claims, including claims for vested benefits,
16 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
17 insurance, disability, social security, workers' compensation, or claims based on facts occurring
18 outside the Class Period. *Id.*, ¶ 6.2.

19 Plaintiffs and Aggrieved Employees release all claims for civil penalties that could have
20 been sought by the Labor Commissioner for the violations identified in Plaintiffs' pre-filing letter
21 to the LWDA; Plaintiffs do not release the claim for wages or damages of any Aggrieved
22 Employee unless such Aggrieved Employee is a Participating Class Member. Settlement, ¶ 6.

23 **G. Notice and Claims Process and Procedures**

24 Not later than 3 business days after the Administrator's receipt of any Notice Packet
25 returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any
26 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
27 the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet
28 to the most current address obtained. The Administrator has no obligation to make further
attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
the USPS a second time. *Id.*, ¶ 8.4.3.



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1 The deadlines for Class Members' written objections, Challenges to Work Weeks and/or
2 PAGA Paychecks (disputes), and Requests for Exclusion will be extended an additional 14 days
3 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice
4 is re-mailed. The Administrator will inform the Class Member of the extended deadline with the
re-mailed Notice Packet. *Id.*, ¶ 8.4.4.

5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers
6 any persons who believe they should have been included in the Class Data and should have
7 received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone,
8 and in good faith. In an effort to agree on whether to include them as Class Members. If the Parties
9 agree, such persons will be Class Members entitled to the same rights as other Class Members,
10 and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
11 to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or
12 the deadline dates in the Class Notice, which ever are later. Settlement, ¶¶ 8.4.3, 8.4.4, and 8.4.5.

13 **1. Disputes**

14 Each Class Member shall have 60 days after the Administrator mails the Notice Packet
15 (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge
16 the number of Class Work Weeks and PAGA Paychecks (if any) allocated to the Class Member
17 in the Class Notice. This is also known as a dispute. A Work Week Dispute form, attached as
18 Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the
19 allocation by communicating with the Administrator via fax, email or mail. The Administrator
20 must encourage the challenging Class Member to submit supporting documentation. In the
21 absence of any contrary documentation, the Administrator is entitled to presume that the Work
22 Weeks contained in the Class Notice are correct so long as they are consistent with the Class Data.
23 The Administrator's determination of each Class Member's allocation of Work Weeks and/or
24 PAGA Paychecks shall be final and not appealable or otherwise susceptible to challenge. The
25 Administrator shall promptly provide copies of all challenges to calculation of Work Weeks
26 and/or PAGA Paychecks to Defense Counsel and Class Counsel and the Administrator's
27 determination the challenges. Settlement, ¶ 8.6.

28 **2. Opting Out**

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class



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Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B to the Settlement Agreement, may be used for this purpose but is not required.

The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge. *Id.*, ¶ 8.5.2.

Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. *Id.*, ¶ 8.5.3.

Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Aggrieved Employees are eligible for an Individual PAGA Payment. Settlement, ¶¶ 8.5.1, 8.5.2, 8.5.3, and 8.5.4.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments. *Id.*, ¶ 8.7.1.



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1 Participating Class Members may send written objections to the Administrator, by fax,
2 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
3 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
4 Participating Class Member who elects to send a written objection to the Administrator must do
5 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
6 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
as Exhibit D may be used for this purpose but is not required. *Id.*, ¶ 8.7.2.

7 Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement. Settlement, ¶ 8.7.3.

9 **H. Uncashed Checks**

10 For any Class Member whose Individual Class Payment check or Individual PAGA
11 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
12 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
13 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
California Code of Civil Procedure Section 384, subd. (b). Settlement, ¶ 4.4.3.

14 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

15 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
16 and its members are too numerous for joinder to be practical; (2) the representative and absent
17 class members share a community of interest and questions of law and fact common to the class
18 predominate over questions unique to individual class members; (3) the representative's claims
19 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
20 class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
21 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
22 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

23 **A. The Settlement Class Is Objectively Ascertainable**

24 A class is ascertainable when it may be readily identified without unreasonable expense
25 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
26 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-
27 defined Class is ascertainable because its members may be identified by reference to Defendants'
28 records and Defendants have agreed to share the relevant information from their records to
facilitate the settlement process. DS, ¶ 22. Therefore, the Settlement Class is ascertainable.



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1 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

2 The Settlement Class has sufficiently numerous members to render joinder impractical.
3 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
4 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 100 Class
5 Members. DS, ¶ 13. Plaintiffs maintain that it would be impractical and economically inefficient
6 to require each Class Member to separately maintain an individual action or be joined as a named
7 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
8 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
9 the Settlement Class' membership is sufficiently numerous. DS, ¶ 23. *See Daar v. Yellow Cab*
10 *Co.* (1967) 67 Cal.2d 695.

11 **C. Class Members Share a Well-Defined Community of Interest**

12 The community of interest requirement “embodies three factors: (1) predominant common
13 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
14 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
15 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
16 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
17 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
18 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
19 renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

20 To justify certification, the class proponent ““must show ... that questions of law or fact
21 common to the class predominate over the questions affecting the individual members”” *See,*
22 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal. App. 4th 723, 732 (citing *Washington Mut. Bank,*
23 *FA v. Superior Court* (2001) 248 Cal. 4th 906, 913). In light of the more lenient standard for
24 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
25 the claims of the Class Members all stem from the same sources.

26 In this case, Plaintiffs assert all Class Members were subject to the same or similar
27 operations and employment policies, practices, and procedures. The claims arise from
28 Defendants’ alleged policy-driven failure to pay wages, failure to provide meal periods, failure to
 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
 proper wage statements, failure to timely pay wages, failure to maintain required payroll records,
 and related labor law violations, all of which Plaintiffs claim constitute unfair business practices
 and give rise to PAGA penalties. Plaintiffs assert that common questions include, but are not



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1 limited to: (1) Whether Defendants failed to pay all wages earned to Class Members for all hours
2 worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with all
3 meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay
4 the class one additional hour of pay on workdays it failed to provide the class with one or more
5 meal or rest periods in compliance with California law; (4) Whether Defendants failed to
6 indemnify the class for all necessary business expenditures incurred during the discharge of their
7 duties; (5) Whether Defendants knowingly and intentionally failed to provide the class with
8 accurate wage statements; (6) Whether Defendants willfully failed to provide the class with timely
9 final wages; and (7) Whether Defendants engaged in unfair competition within the meaning of
10 Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 24.
Therefore, common questions predominate.

11 **D. Plaintiffs are Typical of the Settlement Class**

12 The class representative must be similarly situated to the rest of the purported class. *See*
13 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
14 that the class representative must have identical interests with the class members. The only
15 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
16 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
17 Plaintiffs’ claims and the claims alleged on behalf of the class”). Plaintiffs contend that their
18 claims are typical for the purposes of certifying the Settlement Class. Plaintiffs assert that they,
19 like absent Class Members was subject to the same relevant policies and procedures governing
20 their compensation, hours of work and meal and rest periods. Because Plaintiffs contend that they
21 were subject to the same general course of conduct as absent Class Members, resolving the
22 common questions as they apply to Plaintiffs will determine Defendants’ *prima facie* liability to
23 all Class Members. Moreover, Plaintiffs’ claims could potentially be subject to the same primary
affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs’ claims are typical
of the Class. DS, ¶ 25.

24 **E. Plaintiffs will Adequately Represent the Settlement Class**

25 The adequacy requirement is met where the Plaintiffs are represented by counsel qualified
26 to conduct the litigation and the Plaintiffs’ interest in the litigation is not antagonistic to the class’
27 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
28 Plaintiffs have adequate counsel, the Plaintiffs may represent the entire class absent any disabling
conflicts of interest that might hinder the Plaintiffs’ ability to represent the class. DS, ¶ 27.



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1 First, Class Counsel have supplied the Court with declarations to show that they are
2 adequate to represent the Settlement Class and that they have significant experience in
3 employment litigation generally, and wage and hour and employment-related class action
4 litigation specifically. See DS, ¶¶ 28-35; Declaration of Walter L. Haines (“Haines Decl.”) ¶ 3.
5 Thus, Plaintiffs’ counsel are adequate to serve as Class Counsel.

6 Second, Plaintiffs contend that they are adequate class representatives. Plaintiffs and the
7 Class Members have strong and co-extensive interests in this litigation because they all worked
8 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
9 the same alleged course of conduct, and there is no evidence of any conflict of interest between
10 Plaintiffs and the Class Members. DS, ¶ 27. Moreover, Plaintiffs have demonstrated their
11 commitment to the Settlement Class by, among other things, retaining experienced counsel,
12 providing counsel with documents and extensively speaking with them to assist in identifying the
13 claims asserted in this case, assisting them in identifying witnesses, as well as exposing
14 themselves to the risk of attorneys’ fees and costs awards against them if this lawsuit had been
15 unsuccessful. DS, ¶ 27. Thus, Plaintiffs are adequate to serve as settlement class representative.
16 Accordingly, this Court should find that Plaintiff and their counsel are adequate to represent the
17 Settlement Class as required under Code of Civil Procedure § 382.

18 **F. Class Action Treatment Is the Superior Means For Resolving The Claims**
19 **Of The Class Members**

20 Plaintiffs further contend that a class action is also superior to other means of adjudicating
21 the issues in this action. The predominance of common legal and factual questions shows that this
22 Court could fairly adjudicate the claims of Class Members through a single class action. In view
23 of the *theoretical* alternatives that proposed class members could potentially utilize—
24 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
25 claims through the Division of Labor Standards Enforcement (where there would be relatively
26 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
27 superior to all of them. Thus, this consideration supports conditional class action treatment for
28 purposes of this Settlement only. DS, ¶ 36.

V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY APPROVAL
BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

A. Legal Standard

A class action settlement requires court approval. California Rules of Court (“CRC”),
Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a



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1 written motion for preliminary approval, the proposed class settlement, and the proposed class
2 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
3 hearing where class members may be heard regarding the settlement, and at which evidence and
4 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
5 The decision to approve or reject a class settlement is committed to the Court's broad discretion.
6 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
7 class settlement may be reversed only upon a showing of "clear abuse of discretion." *Id.*

8 **B. The Settlement Is Presumptively Fair**

9 In assessing preliminary approval, a court evaluates if the settlement process has certain
10 indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through
11 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
12 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
13 of objectors is small." *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
14 48 Cal.App.4th at 1794.

15 The class settlement here satisfies all of these factors. DS, ¶ 37. The Settlement resulted
16 from thorough, arms' length, negotiations between experienced counsel with the assistance of a
17 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
18 weaknesses of their respective cases and Defendants' estimated exposure for failure to (1)
19 compensate the employees for all hours worked, (2) provide timely, duty-free meal and rest
20 periods, and (3) reimburse for reasonable cellphone expenses, and (4) related violations of the
21 Labor Code and applicable Wage Order. DS, ¶ 37. Plaintiffs prepared "damages" estimates in
22 advance of the mediation. DS, ¶ 38, Ex. 11. Plaintiffs determined Defendants' maximum possible
23 exposure for restitution and penalties to be approximately \$3,465,602.16 (consisting of
24 \$1,398,255.94 in unpaid wages, \$196,790.54 in missed meal period premium wages, \$296,811.60
25 in missed rest break premium wages, \$53,746.00 in unreimbursed expenses, \$143,293.15 for
26 wage statement penalties, \$390,240.00 for waiting time penalties, and \$986,464.93 for civil
27 penalties under PAGA. Plaintiffs calculated the damages based on the number of workweeks and
28 pay periods provided by Defendants, Plaintiffs' reports, and the employee data. *Id.*

Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix*
campaign and pursue individual release agreements from the Class Members. Defendants also
represented that they had interviewed Defendants' current employees regarding Plaintiffs' claims,



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1 all of whom would provide declarations, under penalty of perjury, that were favorable to
2 Defendants with respect to the relevant factual issues at issue in Plaintiffs' action. Plaintiffs'
3 counsel applied discounts to the maximum possible exposure to account for all other risks
4 discussed below. While it is difficult to assign anything but crudely-determined percentages of
5 risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude
6 recovery for such employees is substantial and alone justifies a significant discount because
7 Defendants would likely by trial have gathered releases from the majority of the Class Members.
8 A settlement for approximately 15.19% of the potential recovery is a proportion substantially in
9 excess of recovery proportions sanctioned by existing case law.⁴ *Id.*

10 Plaintiffs are aware of only two significant awards under the PAGA in a contested
11 proceeding, both issued by federal district courts.⁵ DS, ¶ 55. PAGA penalty awards are often

12
13 ⁴ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
14 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
15 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
16 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
17 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
18 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
19 of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
20 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
21 potential recovery asserted by either party.”).

22 ⁵ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
23 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
24 \$18,695,692.58. In this regard, the district court stated,

25 The plain language of PAGA provides that “a court may award a lesser amount than the
26 maximum civil penalty amount specified by this part if, *based on the facts and*
27 *circumstances of the particular case*, to do otherwise would result in an award that is
28 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
added). The relationship between the amount of total damages and the amount of
maximum PAGA penalties is certainly a “circumstance” of the case under the term's
ordinary meaning. The weight given to that circumstance is greater in this case because
Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
individual claims except for one. As a general matter, it would be excessively punitive
for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
the damages caused by that injury or set of injuries.

Id., fn. 9. The district court further stated, “Virgin “has not presented any evidence that the full
penalty would be excessive in relation to its ability to pay,” the weight of this factor is lessened.”
Id.



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1 small even for egregious, intentional violations of the Labor Code.⁶ *Id.* For instance, on October
2 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
3 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
4 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
5 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
6 PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar
7 result could occur here. *Id.*

8 Plaintiffs' initial estimates do not realistically account for the risks outlined below or the
9 risk that a class will not be certified. *Id.* Therefore, Plaintiffs believe a class settlement for
10 \$500,000.00 is fair and reasonable. *Id.*

11 **C. The Settlement Satisfies the Kullar Factors for Approval**

12 The *Kullar* case sets forth several factors a court should consider in determining whether
13 to approve a class settlement. These factors include: (1) the strength of Plaintiffs' case; (2) the
14 risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
15 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
16 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
17 of a governmental participant; and (8) the reaction of the class members to the proposed
18 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
19 factors.

20 **1. Evaluation of Plaintiffs' Case**

21 **a. Risks Associated With the Arbitration Agreements**

22 The arbitration agreements entered into between Defendants on the one hand, and the
23 Class Members, on the other, present a significant risk to the success of Plaintiffs' class action
24 litigation. DS ¶ 41. According to Defendants, the majority of the Class entered into arbitration
25 agreements with Defendants. *Id.* As the arbitration agreements in question restrict potential
26 litigants from bringing class actions against Defendants, Plaintiffs would be effectively barred
27

28 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
comply with the requirements of California Labor Code section 226.

⁶ In 2012, Plaintiffs' counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA.



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1 from pursuing claims on behalf of the Class in Court. *Id.* Thus, there is a significant risk the Court
2 could determine that those Class Members who have not entered into arbitration agreements with
3 Defendants do not constitute a sufficiently numerous class to justify class action treatment. As
4 such, by continuing to trial on class-wide claims, Plaintiffs would run the high risk of suffering
5 defeat due to the existence of the arbitration agreement. Moreover, the arbitration agreements
6 would pose danger to any class certification motion brought by Plaintiffs. Because different
7 defenses would apply to some Class Members and not others – i.e., the existence of signed
8 arbitration agreements – there is a risk that the Court could determine that Plaintiffs’ claims
9 present too many individualized inquiries to justify class certification. *Id.*

9 **b. Risks Associated with Defendants’ financial Condition**

10 Defendants’ financial condition was an important factor in reaching this Settlement. DS,
11 ¶ 42. Due to Defendants’ financial condition, even if Plaintiffs prevailed on all claims at trial,
12 they may never recover the damages due to the risk of insolvency. A very large class action
13 judgment would almost certainly put the company out of business and/or would interfere with the
14 company's ability to carry out its contractual obligations. *Id.* In short, the “poor financial health
15 of [the Defendants will] seriously increase [] the chance that Plaintiffs would be left with nothing
16 if they continued to litigate their claims.” *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8
17 F.3d 1370, 1376 (the financial condition of Defendants predominated in assessing the
18 reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244,
19 1256 (uncertainty concerning Defendants’ financial stability “strongly supports the
20 reasonableness of the settlement”); *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S.
21 App. LEXIS 10259 at *11 (finding potential insolvency to be additional risk that favors approval
22 of a class action settlement). Accordingly, Defendants’ financial distress supports this settlement.
23 *Id.*

24 **c. Risks Associated with the Unpaid Wages Claim**

25 There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely limited at
26 best, largely because Defendants’ written policies throughout the relevant time period prohibited
27 off-the-clock work. DS, ¶ 43. Off-the-clock claims are difficult where a Defendants require in
28 their written policies that all work must take place while clocked in. *See Jong v. Kaiser
Foundation Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock
work for it to be compensable). *Id.* In their written employment policies, Defendants mandate that
employees must record all time worked accurately on their time records and strictly prohibit



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1 employees from performing any work off-the-clock. DS, ¶ 44. Moreover, while Defendants
2 dispute that off-the-clock work occurred, they contend that any time spent off the clock was *de*
3 *minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835
4 suggested that irregular and minute periods of time may still be subject to a *de minimis* defense
5 even if compensable. (Stating that “We do not decide whether there are circumstances where
6 compensable time is so minute or irregular that it is unreasonable to expect the time to be
7 recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine may apply here
8 because the time spent off the clock were minute and insignificant. Accordingly, a large award of
penalties seems unlikely with respect to this claim. *Id.*

9 The difficulty inherent in proving that off-the-clock work occurred poses a significant
10 hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to prove this claim.
11 Generally, a court will not certify a class unless it can determine an appropriate classwide
12 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiffs
13 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
14 the lack of records indicating when such off-the-clock work may have taken place. Individualized
15 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
16 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
17 risk that the Court would consider this evidentiary showing insufficient as a classwide
methodology. DS, ¶ 44.

18 **d. Risks Associated with the Meal Period Claims**

19 There are risks to Plaintiffs’ meal period claim. DS, ¶ 45. Defendants contend that, to
20 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
21 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
22 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
23 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
24 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
25 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
26 to the meal break claim is the reason that a particular employee may have failed to take a meal
27 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

28 Defendants contend they did not impede or discourage Plaintiffs, or any other employees,
from taking their meal or rest periods. DS, ¶ 46. Defendants’ policies mandate that employees



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1 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
2 of their meal breaks each day on their time records. *Id.* The time records produced to Plaintiffs
3 for purposes of mediation show that meal periods were taken the vast majority of the time. *Id.* Of
4 the time records that show a late, short or no lunch, individualized evidence may be necessary to
5 determine whether they occurred due to conduct of the Defendants or each of the employees
6 concerned. Accordingly, there is a significant risk that the value of Plaintiffs' meal period claim
would be substantially reduced at trial. *Id.*

7 **e. Risks Associated with the Rest Break Claims**

8 There are risks to Plaintiffs' rest period claim. DS, ¶ 47. Employers are not required to
9 record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
10 employees the opportunity to take rest periods in accordance with California law. Further,
11 Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.*
12 Thus, unlike meal periods, where there are often records showing whether an employee clocked
13 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
14 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
15 Plaintiffs will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
16 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
17 a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
18 (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class
19 certification, it may be possible to manage individual issues through the use of surveys and
20 statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
Corporation v. Behrend (2013) 133 S.Ct. 1426.

21 **f. Risks Associated with the Failure to Indemnify Claim**

22 There is a risk that the Court may consider Plaintiffs' claims as to Defendants' alleged
23 failure to indemnify for business expenses to be individual in nature and thus decline to certify
24 the class. DS, ¶ 48. Plaintiffs allege that Defendants required Plaintiffs and the Class Members
25 to use their personal items including cellular phones, computers and other electronic devices,
26 vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants
27 presented evidence that they had supplied their employees with tools, equipment, and other
28 supplies and had an expense reimbursement policy. As such, there is a risk that the Court may
consider Plaintiffs' claims to be individual in nature and unfit for class wide resolution. *Id.*



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1 **g. Risks Associated with the Waiting Time Penalty Claims**

2 Plaintiffs also assert claims for wage statement violations, untimely wage violations, and
3 PAGA penalties. Under Labor Code section 226, wage statements must include various
4 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
5 DS, ¶ 49.

6 Here, Plaintiffs’ wage statement claim has the same underlying risks as the above claims,
7 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply
8 with the requirements of Labor Code § 226. DS, ¶ 49.

9 **h. Risks Associated with the Waiting Time Penalty Claims.**

10 Without proof willful behavior, Plaintiffs will be unable to recover these penalties.

11 **i. Risks Associated With the PAGA Claim**

12 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
13 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
14 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants has posed valid
15 defenses to the Labor Code claims underlying Plaintiffs’ PAGA allegations. Thus, the PAGA
16 claims likewise face significant uncertainty. DS, ¶ 51. There is a risk that the Court would
17 consider the maximum civil penalty available to be confiscatory. This is particularly the case
18 considering Defendants’ financial condition. *Id.* Moreover, the current COVID-19 pandemic
19 could motivate the Court to further reduce the penalty award to avoid what it may consider a
20 confiscatory taking. *Id.*

21 This uncertainty increases Plaintiffs’ risk of pursuing the PAGA claims and required a
22 significant discount for settlement purposes. DS, ¶ 53. For mediation purposes, Plaintiffs’ counsel
23 estimated a maximum possible exposure of approximately \$986,464.93 in civil penalties. This
24 estimate did not take into account any of the risks discussed above and assumed a violation for
25 every single pay period. *Id.* Plaintiffs’ counsel also assessed multiple penalties for the same pay
26 period for the same alleged violations of different Labor Code provisions and derivative
27 violations. *Id.* Although two federal district court decisions held that “stacking” PAGA penalties
28 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
 jurisdiction, Plaintiffs’ counsel is not aware of any California state courts awarding plaintiffs
 multiple PAGA penalties for the same violation for the same pay period under different Labor
 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
 characterize as claim splitting and not merely stacking. *Id.*



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1
2 **i. Risks Associated With A Pick-Up Stix Campaign**

3 An employer enjoys the right to settle a putative class member's disputed wage claims
4 individually, without the consent or involvement of class counsel. DS, ¶ 56. (See *Chindarah v.*
5 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch
6 a "pick off" settlement campaign to pursue individual release agreements from the Class
7 Members, thereby potentially narrowing the size of the Settlement Class – 100 members - until it
8 is no longer numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient
9 number of employees to represent. This led to a significant reduction of claim value in settlement
10 negotiations. *Id.*

11 While the evidence gathered through Plaintiffs' discovery supports the merits of the
12 claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation
13 presents significant risks that support a downward departure from Defendants' estimated liability
14 exposure. DS, ¶ 57. In view of the risks, the Settlement reflects Plaintiffs' estimate of the total
15 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
16 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
17 It also represents a fair, adequate, and reasonable compromise amount for these claims and
18 warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
19 1376 (the financial condition of Defendants predominated in assessing the reasonableness of
20 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
21 concerning Defendants' financial stability "strongly supports the reasonableness of the
22 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
23 WL 2465049, * 3.

24 **2. Allocation of the PAGA Payment**

25 The settlement of PAGA penalties in the sum of \$20,000.00, of which 75% (\$15,000.00)
26 will be paid to the LWDA and 25% (\$5,000.00) will be distributed to the Class, is reasonable and
27 appropriate under the circumstances. DS, ¶ 58. The Parties negotiated a good faith amount for
28 PAGA Penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
"negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount
was the result of self-interest at the expense of other Class Members," such amounts are generally
considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844



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1 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
2 faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted
3 because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary,
4 and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
5 trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
6 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
7 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
8 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
9 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
10 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
11 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
12 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
13 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
14 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D.
15 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
16 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
17 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
18 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
19 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

18 **3. Presence of Governmental Participant**

19 As required under Labor Code section 2699(l)(2), Plaintiffs will provide notice of this
20 settlement to the LWDA with the filing and service of this motion. DS, ¶ 106, Exs. 23-25.

21 **4. Reaction of Class Members to Proposed Settlement**

22 If the settlement is preliminarily approved, Class Members will be provided with the Court
23 Approved Notice Of Class Action Settlement and Hearing Date For Final Court Approval
24 (attached as Exhibits A-E to the Settlement) and an opportunity to object. DS, ¶ 86. The parties'
25 proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will
26 allow Class Members to make informed responses to the proposed settlement. *Id.*

27 ///



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1 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
2 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
3 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
4 **COMPARED TO OTHER CLASS MEMBERS**

5 The Individual Settlement Payments will be paid to each Class Member based on his or
6 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 76, Settlement ¶ 1.23. Because
7 this method compensates Class Members based on the extent of their potential injuries, in that
8 Class Members who worked for Defendants longer would have been subject to more alleged
9 violations, it is fair, adequate, and reasonable. *Id.*

10 Plaintiff estimates that there are 5,000 Work Weeks for the Class Period. So, each Work
11 Week has a value of approximately \$52.67 (\$263,333.34 Net Settlement Amount / 5,000 Work
12 Weeks = \$52.67). Plaintiff had 139 Work Weeks during the Class Period. Based on this, it is
13 anticipated that Plaintiff Aaron Salazar will receive an Individual Class Payment of
14 approximately \$7,320.67 as a Class Member (139 Work Weeks x \$52.67 = \$7,320.67) while the
15 average estimated Individual Class Payment to Class Members will be approximately \$2,633.33.
16 Some Class Members – those who worked more Work Weeks during the Class Period - will
17 receive more, and some less. The highest possible Individual Class Payment to a Class Member
18 (i.e., to those who qualify for all Work Weeks in the Class Period) will be approximately
19 \$16,552.05. The lowest possible Individual Class Payment to a Class Member (i.e., to those who
20 qualify for only one Work Week in the Class Period) will be approximately \$52.67. *See* DS, ¶
21 75.

22 It is anticipated that the average Aggrieved Employee Individual PAGA Payment will
23 be \$94.34. *Id.* Plaintiffs' Individual PAGA Payment, his individual share of 25% of the PAGA
24 Penalties, will be less than that of some absent Aggrieved Employees. Under the Settlement,
25 each Aggrieved Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties
26 proportionate to the number of paychecks he or she had with Defendants during the PAGA Period,
27 compared to the total of all paychecks of all Aggrieved Employees during the PAGA Period, as
28 reflected by Defendant's records. Plaintiff estimates that there are 1,157 Aggrieved Employee
paychecks for the PAGA Period. So, each Aggrieved Employee paycheck from the PAGA
Period has a value of approximately \$4.32 (25% of \$20,000.00 in PAGA Penalties / 1,157
Aggrieved Employee paychecks = \$4.32). It is anticipated that Plaintiff Aaron Salazar will
receive a Individual PAGA Payment of approximately \$25.93 as an Aggrieved Employee (6



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1 paychecks during the PAGA Period x \$4.32 paycheck value = \$7,320.67) while the average
2 estimated Individual PAGA Payment to an Aggrieved Employee will be approximately \$94.34
3 (\$5,000.00, 25% of PAGA Penalties / Aggrieved Employee paychecks during the PAGA Period
4 = \$94.34 Individual PAGA Payment). Some Aggrieved Employees – those who had more
5 paychecks during the PAGA Period - will receive more, and some less. The highest possible
6 Individual PAGA Payment to an Aggrieved Employee (i.e., to those who qualify for all paychecks
7 in the PAGA Period) will be approximately \$374.80. The lowest possible Individual PAGA
8 Payment to an Aggrieved Employee (i.e., to those who qualify for only one paycheck in the
9 PAGA Period) will be approximately \$4.32. See DS, ¶ 77.

10 **VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’**
11 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

12 The Settlement states Class Counsel may seek attorneys’ fees of \$166,666.66 (one-third
13 of the GSA) and up to \$25,000.00 for actual reasonable litigation costs and expenses incurred in
14 prosecuting the Action. Settlement ¶ 3.2.2. These amounts are reasonable, given the facts and
15 circumstances of the case. DS, ¶¶ 59-61.

16 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
17 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
18 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the “experienced
19 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
20 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
21 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
22 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503 (citing *Lealao, supra*, 82
23 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
24 of the common fund. *Laffitte, supra*, 1 Ca1. 5th 480. Many courts have similarly approved fee
25 awards equal to or greater than the percentage requested here. See, e.g., *In re Pacific Enterprises*
26 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
27 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
28 *Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned



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1 down to devote time to this matter. DS, ¶ 60. Class Counsel interviewed and obtained information
2 from putative class members, met and conferred with Defendants' counsel on numerous
3 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
4 Defendants and obtained through other sources, researched applicable law, and provided
5 estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

6 Class Counsel have borne all the risks and costs of litigation and will receive no
7 compensation until recovery is obtained. DS, ¶ 61. Class Counsel are well-experienced in wage-
8 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
9 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
10 the requested fees and costs are reasonable and should be awarded. *Id.*

11 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS TO PLAINTIFFS**
12 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
13 **ADEQUATE, AND REASONABLE**

14 Courts routinely approve incentive awards to compensate named plaintiffs for the services
15 they provide and the risks they incur during class action litigation, often in much higher amounts
16 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
17 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
18 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
19 enhancement award). The Settlement provides that Plaintiffs may seek Class Representative
20 Service Payments of \$15,000.00 each. This amount is entirely reasonable given Plaintiffs' efforts
21 in this action and the risks they undertook on behalf of Class Members. DS, ¶ 62; Declaration of
22 Aaron Salazar ("Salazar decl."), generally. Plaintiffs have devoted many hours advancing the
23 interests of the Settlement Class. Plaintiffs have done this by, among other things, retaining
24 experienced counsel, providing them with information about his work history with Defendants
25 and Defendants' policies and practices with respect to the wage and hour claims at issue,
26 participating in mediation, and being actively involved in the settlement process to ensure a fair
27 result for the Settlement Class as a whole. In doing this, Plaintiffs have been exposed to significant
28 risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this action had
been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that Plaintiffs
undertook on behalf of the Settlement Class shows that each of the proposed Class Representative
Service Payments is fair, adequate, and reasonable, and thus warrants preliminary approval. DS,
¶¶ 62-72; Salazar Decl., generally.



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1 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
2 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
3 **AND REASONABLE**

4 With regard to the settlement administration costs (“Administration Expenses Payment”) provision, it is reasonable. Before agreeing to Simpluris, Inc. and its bid of \$10,000.00, the Parties
5 sought and reviewed bids from other reputable third-party administrators which provided higher
6 bids. DS, ¶¶ 99-100, Exs. 20, 21, and 22. Thus, the settlement administration costs provision should be given preliminary approval.

7 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
8 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
9 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
10 **EXERCISE THEIR RIGHTS**

11 This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether
12 the notice has “a reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
13 measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of
14 the Notice by First Class U.S. mail only. Settlement, ¶ 4.4.1. Although there are current employee Class Members, it is uncertain whether Defendant’s records of their contact information include
15 email addresses and Class Members, who perform all of their work away from a desk, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
16 DS, ¶ 86.

17 With respect to its content, “[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class
18 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152. The purpose of the notice in class settlement context is to give class members sufficient
19 information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
20 Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
21 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
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1 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
2 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
3 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
4 include the number of Work Weeks a Class Member had during the Class Period. Accordingly,
5 the Notice should be approved because it describes the Settlement with sufficient clarity and
6 specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 86.

7 **XI. CONCLUSION**

8 For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and
9 adopt the proposed order submitted concurrently herewith.

10 Respectfully submitted,

11 THE SPIVAK LAW FIRM

12
13 Dated: January 22, 2024

By:



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ANDREW FORREST, and all others
similarly situated



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