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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JUAN RODRIGUEZ, individually; and on behalf
of all other similarly situated current and former
employees of E.M.E., Inc.

Plaintiffs,

v.

E.M.E., INC., a corporation of unknown origin;
and DOES 1 through 100, inclusive,

Defendant.

) Case No. BC518692
) [Assigned for All Purposes to the Hon.
) Yvette M. Palazuelos, Dept. 9]
)
) **PLAINTIFF JUAN RODRIGUEZ'S**
) **NOTICE OF MOTION AND MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF**
)
) Date: September 3, 2020
) Time: 10:00 a.m.
) Dept.: 9

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE

NOTICE that on September 3, 2020, at 10:00 a.m., in Department 9 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, the Plaintiff Juan Rodriguez will move and hereby does move the Court for preliminary approval of the revised class action settlement agreement reached by the parties to the above-captioned litigation. Specifically, Plaintiff Juan Rodriguez respectfully requests that the Court: (1) grant preliminary approval for the proposed class action settlement; (2) authorize the mailing of the proposed notice to the class of the settlement; and (3) schedule a “fairness hearing,” i.e. a hearing on the final approval of the settlement.

Plaintiff Juan Rodriguez makes this motion on the grounds that the proposed settlement is within the range of possible final approval, and notice should, therefore, be provided to the class. The motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the declarations of Class Counsel Farzad Rastegar and Plaintiff Juan Rodriguez, the [Revised] Joint Stipulation of Class Action Settlement and Release, and any other evidence, oral or documentary, which may be considered by the Court at the time of hearing.

Respectfully submitted,

Dated: August 10, 2020

RASTEGAR LAW GROUP

BY:

Farzad Rastegar
Douglas W. Perlman
Ryan D. Aliman
Attorneys for Plaintiff Juan Rodriguez

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A. Preliminary Statement

1. At Article I, Section g, change the end of the class period from the date of preliminary approval to December 7, 2017;

3. At Section 5.01 of the Settlement Agreement, add a provision that claims for sexual harassment, violations of the California Fair Employment and Housing Act, and for retaliation are excluded from the release.

B. *Summary of the Case*

Defendant E.M.E., Inc. (“Defendant” or “EME”) is a service business, mostly in the aerospace industry, finishing aircraft parts for machine shops and manufacturers, like Boeing and Northrup Grumman. “Finishing,” means inspection of parts that are made by machine shops, anodizing and chemically processing those parts to increase longevity, and priming and painting parts, before sending them back to the machine shops. (Declaration of Farzad Rastegar (“Rastegar Decl.”), ¶ 5). Plaintiff Juan Rodriguez (“Plaintiff” or “Named Plaintiff” or “Class Representative”) worked as an hourly, non-exempt painter and shift supervisor for Defendant during four different periods of time with EME, going back to 1995. (*Id.*). His last

1 stint was from December 2008 until May 2013. (*Id.*). During Plaintiff's last stint of
2 employment from 2008 to 2013, he worked both the first shift and second shift during different
3 periods of time, and worked at least eight hours per shift. (*Id.*). Defendant and Plaintiff are
4 sometimes referred to herein collectively as "the Parties."

5 On August 16, 2013, Plaintiff filed a class action complaint in the Superior Court of
6 California for the County of Los Angeles, in Case No. BC518632 against Defendant. The
7 Complaint alleged the following eight causes of action, respectively: (1) Failure to Provide
8 Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Overtime Compensation;
9 (4) Failure to Pay Minimum Wage; (5) Failure to Pay All Wages Due; (6) Failure to Provide
10 Accurate Wage Statements and Maintain Required Records; and (7) Unfair Business Practices.

11 On February 23, 2015, Plaintiff Juan Rodriguez ("Plaintiff" or "Rodriguez") moved for
12 class certification and Defendant, simultaneously, moved for summary judgment. The trial
13 court granted Plaintiff's motion for class certification on the rest period and derivative claims
14 (failure to provide accurate wage statements, failure to pay all wages due upon termination,
15 and unlawful business practices) and denied the motion as to Plaintiff's meal period, minimum
16 wage and overtime claims. However, the trial court then, simultaneously, granted summary
17 judgment on Plaintiff's certified claims. Plaintiff only appealed the order granting summary
18 judgment on the certified claims and not the order denying class certification on Plaintiff's
19 meal break, overtime and minimum wage claims. On April 22, 2016, the Court of Appeal
20 reversed the trial court's order granting summary judgment and issued a published opinion,
21 announcing new California law, regarding the provision of combined rest breaks on shifts
22 greater than 6 hours. (Rastegar Decl., ¶ 6).

23 Thereafter, the Parties appeared for a series of Case Management Conferences and
24 began merits-based discovery in preparation for a "paper trial" before this Court. The Parties
25 also mailed an opt-out letter to the 299 class members, with the assistance of Phoenix
26 Settlement Administrators, notifying them of the pending class action lawsuit and providing
27 them an opportunity to opt out of the class. The opt out deadline was December 7, 2017 and
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1 the final class list consisted of 265 class members who worked for Defendant between August
2 16, 2009 and December 7, 2017, and who chose not to opt out. (Rastegar Decl., ¶ 7).

3 On November 13, 2018, the Parties engaged in private mediation with mediator Lynn
4 Frank, an experienced class action mediator, who assisted the parties in reaching the instant
5 settlement. (Rastegar Decl., ¶ 8). The Parties now hereby agree to an “all in” \$550,000.00,
6 non-reversionary settlement upon the terms and conditions set forth in the executed [Revised]
7 Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”). The
8 Parties agreed that the class consists of any and all of Defendant’s hourly, non-exempt
9 employees in California from August 16, 2009 through December 7, 2017, who did not opt out
10 of the class.

11 Defendant denies all of the claims and contentions alleged by Plaintiff in the Litigation.
12 Nonetheless, Defendant has concluded that to continue the Litigation would be protracted and
13 expensive and that it is desirable that the Litigation be fully and finally settled in the manner
14 and upon the terms and conditions set forth in this Stipulation. In addition, Defendant has
15 taken into account the uncertainty and risks inherent in any litigation, particularly class action
16 litigation, as well as the difficulties and delays inherent in such litigation. Defendant has,
17 therefore, determined that it is desirable and beneficial to it that the Litigation be settled in the
18 manner and upon the terms and conditions set forth in the Settlement Agreement.

19 **II. SETTLEMENT**

20 **A. Settlement Negotiations**

21 On January 26, 2017, the Parties engaged in a full day of private mediation with
22 experienced, class action mediator Steven Pearl, Esq., but without success. On November 13,
23 2018, the Parties again engaged in another full day of private mediation, this time with
24 mediator Lynn Frank, also an experienced class action mediator, who assisted the parties in
25 reaching a settlement in principal and the execution of a Memorandum of Understanding. All
26 the settlement discussions were conducted at arm’s-length. The settlement is the result of an
27 informed and detailed analysis of the risks facing both parties in litigating this case, including
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1 but not limited to, careful consideration of the legal and factual obstacles to demonstrating
2 Plaintiff's merits at trial, and Defendant's defenses, as well as Defendant's potential exposure
3 and the additional costs of litigating the Action, including Defendant's tenuous financial
4 condition and ability to pay much, if anything, beyond the Gross Settlement Fund. (Rastegar
5 Decl., ¶ 8).

6 **B. Definition of the Proposed Class**

7 The proposed settlement class (collectively "Class Members" or "the Class") means
8 any and all of Defendant's hourly, non-exempt employees in California from August 16,
9 2009 through December 7, 2017, who did not opt out of the class. The starting eligibility
10 date is four years prior to the date of the filing of the complaint pursuant to the four-year
11 statute of limitations that applies to Plaintiff's cause of action for violation of the Business
12 & Professions Code. (Rastegar Decl., ¶ 9).

13 As set forth in more detail below, the Parties agreed to an "all in", non-reversionary
14 settlement, wherein Class Members are automatically included in the Settlement unless they
15 timely exclude themselves from participation.

16 **C. Settlement Terms**

17 In exchange for a release of claims against Defendant, as set forth more fully in the
18 Settlement Agreement, the payment terms of the settlement are as follows:

19 **1. Gross Settlement Fund**

20 The Gross Settlement Fund ("Gross Settlement Fund" or "GSF") of Five-Hundred Fifty
21 Thousand Dollars (\$550,000.00) includes the following: (a) the Individual Settlement Payments
22 to the Participating Class Members; (b) the fees award to Class Counsel in an amount not to
23 exceed 33.3% of the Gross Settlement Fund (or One-Hundred Eighty-Three Thousand One-
24 Hundred Fifty Dollars (\$183,150.00)); (c) reimbursement of actual documented costs incurred by
25 Class Counsel in an amount not to exceed Thirty-Nine Thousand Dollars (\$39,000.00); (d) the
26 Enhancement Award to Named Plaintiff, in a total amount not to exceed Ten-Thousand Dollars
27 (\$10,000.00); (e) Settlement Administration expenses, not to exceed Thirteen Thousand Dollars
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1 (\$13,000.00); (f) payment to the LWDA in the amount of Seven-Thousand Five-Hundred Dollars
2 (\$7,500.00) as the LWDA's share of the settlement of the PAGA penalties. The Gross
3 Settlement Fund has a maximum value of Five-Hundred Fifty Thousand Dollars (\$550,000.00),
4 excluding employer-paid payroll taxes. Under no circumstances will Defendant be required to
5 pay more than Five -Hundred Fifty Thousand Dollars (\$550,000.00) pursuant to the terms set
6 forth in this Agreement, except as provided in Section 3.04(f) of the Settlement Agreement.

7 The Parties agree that the GSF shall be paid into a Qualified Settlement Account,
8 established by Phoenix Settlement Administrators as follows: (1) a \$150,000.00 initial payment
9 by Defendant within sixty-five (65) calendars days after the Court enters an order granting final
10 approval of the Settlement Agreement; and (2) the remaining \$400,000.00, made payable in
11 fifty-four (54) monthly installments of \$7,407.41, beginning thirty (30) days after the initial
12 \$150,000.00 payment by Defendant, and paid monthly until the GSF is paid in full. Defendant's
13 payment obligations shall be secured by a Deed of Trust as security for the obligation of
14 Defendant under the terms of the Settlement Agreement, to be secured by the property located at
15 501 E. Oak Street, Compton, California 90221. Defendant agrees to cooperate by providing
16 financial information and/or a corporate representative declaration as needed in order to support
17 approval of the Settlement. A true and correct copy of the first Deed of Trust is attached to the
18 Settlement Agreement as **Exhibit C**.

19 Moreover, the parties agree to disburse two payments to Class Members who do not opt
20 out of the Settlement Class ("Participating Class Members"). The first payment shall occur
21 within thirty (30) days after Defendant deposits the initial \$150,000.00 payment into the
22 qualified settlement account. Named Plaintiff shall also receive his Enhancement award of
23 \$10,000.00 (or the amount approved by the Court) within thirty days after Defendant deposits the
24 initial \$150,000.00 payment into the qualified settlement account. The second payment of the
25 remaining balance owed to Class Members shall be paid within thirty (30) days after a sufficient
26 number of payments have been made to satisfy the Net Settlement Amount. To the extent that an
27 Individual Settlement Payment check is (1) undeliverable, or (2) uncashed 180 days after the
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1 date listed on the check, the Individual Settlement Payment check shall be distributed to the State
2 Controller's Office Unclaimed Property Fund in the name of the Participating Settlement Class
3 Member to whom the Individual Settlement Payment check is addressed.

4 Payments to Class Members are defined as the "Individual Settlement Payments." The
5 Individual Settlement Payments to each Participating Class Member shall be distributed
6 proportionately based on the number of work shifts that they worked for Defendant during the
7 Class Period as a non-exempt employee in California. The Individual Settlement Payments shall
8 be designated as twenty percent wages, forty percent interest, and forty percent penalties,
9 including waiting time penalties.

10 Attorneys' fees and expenses

11 Subject to Court approval, Class Counsel's attorneys' fees will be limited to no more than
12 thirty-three and one-third percent (33.3%), or One-Hundred Eighty-Three Thousand One-
13 Hundred Fifty Dollars (\$183,150.00) in fees and up to Thirty-Nine Thousand Dollars
14 (\$39,000.00) in documented litigation costs per Class Counsel's billing records. In the event that
15 the Court awards less attorneys' fees or litigation expenses than requested, then any portion of
16 the requested amount not awarded to Class Counsel shall be added to the Net Settlement Amount
17 for disbursement.

18 Class Representative Enhancement Payment

19 Named Plaintiff shall also receive his Enhancement award of \$10,000.00 (or the amount
20 approved by the Court) from the GSF, within thirty days after Defendant deposits the initial
21 \$150,000.00 payment into a qualified settlement account, to compensate him for the risks, time,
22 and expense of his involvement in the action and in consideration for his general release of all
23 other claims as specified in Section 5.02 of the Settlement Agreement. In the event that the
24 Court awards less than the amount of the Enhancement Payment requested, then any portion of
25 the requested amount not awarded to Plaintiff as the Class Representative shall be added to the
26 Net Settlement Amount.

27 LWDA Payment

1 The Settlement Administrator, within twenty-one (21) calendar days after the GSF has
2 been fully funded by Defendant under the terms set forth in section 3.06(a). of the Settlement
3 Agreement, shall deliver to the LWDA a payment in the amount of Seven-Thousand Five-
4 Hundred Dollars (\$7,500.00) as the LWDA's share of the settlement of the PAGA penalties,
5 which the Parties believe in good faith is a fair and reasonable apportionment. The Parties
6 recognize and agree that \$7,500.00 represents seventy-five percent (75% of \$10,000.00 of the
7 PAGA penalties) which must be paid to the LWDA, as mandated by Cal. Labor Code Section
8 2699(i).

9 Settlement Administration Costs

10 The Settlement Administration Costs shall be paid out of the GSF no later than twenty-
11 one (21) calendar days after the GSF has been fully funded by Defendant under the terms set
12 forth in section 3.06a. of the Settlement Agreement. The Parties agree that the Administrator
13 Costs shall not exceed Thirteen Thousand Dollars (\$13,000.00). If the Settlement
14 Administrator's costs do not amount to the Thirteen Thousand Dollars (\$13,000.00) maximum
15 amount allocated to those costs, any residual amount shall be distributed to the Participating
16 Class Members using the formula laid out in Section 3.06(e).

17 **2. Net Settlement Amount**

18 The "Net Settlement Amount" is the portion of the Gross Settlement Fund available for
19 distribution to Participating Class Members after deducting Plaintiff's attorneys' fees and
20 litigation costs, Settlement Administration Costs, a \$7,500.00 payment to the LWDA (out of
21 \$10,000.00 allocated for PAGA), and the Enhancement Payment to the Class Representative.
22 Plaintiff and Defendant agree that the Settlement is an all-in, non-reversionary settlement, such
23 that Settling Class Members automatically receive payment of their Individual Settlement
24 Payments unless they timely submit a valid Request for Exclusion or Opt Out Request.

25 **3. Administration of the Settlement to Class Members**

26 The Settlement Administrator

27 The Parties have chosen Phoenix Settlement Administrators ("the Settlement
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1 Administrator") to administer this Settlement and to act as the Settlement Administrator,
2 including, but not limited to, distributing any notices that must be provided to the Class,
3 performing address updates and verifications as necessary prior to the first mailing, performing a
4 single address follow-up on any returned mail, responding to inquiries about the Notice of
5 Proposed Class Action Settlement, determining the validity of all Opt-Out Requests, calculating
6 the Net Settlement Amount and the Individual Settlement Payments, calculating employer
7 payroll taxes, preparing tax statements and/or reports and remitting the necessary tax payments,
8 providing necessary progress reports, preparing declarations required by the Court, preparing a
9 detailed declaration for Defendant that sets forth each of Class Members who did not submit
10 valid Opt-Out Requests, and, with notice and consent of the Parties, generating and issuing the
11 Individual Settlement Payment checks and distributing them to Verified Settlement Class
12 Members, and issuing the checks to Class Counsel for attorneys' fees and costs, the
13 Enhancement Award check to the Named Plaintiff, the PAGA payment to the LWDA, and any
14 other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the
15 terms of this Agreement.

16 The Settlement Administrator shall expressly agree to all of the terms and conditions of
17 the Settlement Agreement relating to the administration of the Settlement. The Parties each
18 represent that they do not have any financial interest in the Settlement Administrator or
19 otherwise have a relationship with the Settlement Administrator that could create a conflict of
20 interest.

21 The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly
22 report that certifies: (i) the number of Class Members to whom the Settlement Administrator has
23 mailed the Notice Packet; (ii) the number of Notice Packets that were returned as undeliverable;
24 (iii) the number of Class Members who have submitted valid Opt Out Requests; (iv) the number
25 of Class Members who have submitted challenges or objections to any information contained in
26 the Notice Packet; and (v) the number of Settlement Class Members who have submitted
27 objections to the Settlement. Additionally, the Settlement Administrator will provide to Defense
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1 Counsel and Class Counsel any updated reports regarding the administration of the Settlement
2 Agreement.

3 The Settlement Administrator shall maintain throughout the administration of the
4 Settlement all of the Opt-Out Requests that it receives. At the conclusion of the administration
5 of the Settlement, the Settlement Administrator shall retain all Opt-Out Requests for an
6 additional four years. The Settlement Administrator shall provide to Defense Counsel all Opt-
7 Out Requests.

8 All costs of administering the Settlement, including, but not limited to, all costs and fees
9 associated with preparing, issuing, and mailing any and all notices to Class Members and/or
10 Participating Class Members, all costs and fees associated with computing, processing,
11 reviewing, and mailing the Individual Settlement Payments, all costs and fees associated with
12 preparing any tax returns and any other filings required by any governmental taxing authority or
13 agency, all costs and fees associated with preparing any other checks, notices, reports, or filings
14 to be prepared in the course of administering disbursements from the Net Settlement Amount,
15 and any other costs and fees incurred and/or charged by the Settlement Administrator in
16 connection with the carrying out of its duties under this Agreement, shall be paid to the
17 Settlement Administrator from the Gross Settlement Fund. Class Counsel shall not receive any
18 fees or disbursements from the Gross Settlement Fund relating to the administration of
19 disbursements from the Gross Settlement Fund. The Parties agree that the Settlement
20 Administrator's costs will not exceed Thirteen Thousand Dollars (\$13,000.00).

21 The Settlement Administrator shall be required to acknowledge that in its role as
22 Settlement Administrator it owes fiduciary obligations to the Named Plaintiff and Class
23 Members and will be required to attest that it will make payments consistent only with the terms
24 of the Settlement Agreement, including the allocation instructions set forth in the Settlement
25 Agreement, or as ordered by the Court. In no event shall the Settlement Administrator permit the
26 disbursement of any portion of the Gross Settlement Fund before the Effective Date. The
27 obligations of the Settlement Administrator are released upon all funds being disbursed by the
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1 Settlement Administrator pursuant to the Settlement Agreement and/or order(s) of the Court.

2 Notice to Class Members.

3 Notice of the Settlement shall be provided to the Class Members, and the Class
4 Members may submit objections to the Settlement and/or Requests for Exclusion from the
5 Class by using the following procedures:

6 Within twenty-one (21) days after the Court preliminarily approves the Settlement,
7 Defense Counsel will provide the Class List to the Settlement Administrator.

8 Within twenty-eight (28) days after the Preliminary Approval Date, the Settlement
9 Administrator shall update the addresses using the United States Postal Service's
10 NCOALink system and mail the Notice Packet by first-class United States mail to each
11 Class Member.¹ Notice Packets returned to the Settlement Administrator as non-delivered
12 during the forty-five (45) calendar day period for Class Members to dispute, request
13 exclusion from the Agreement, or submit an objection, shall be re-sent within three (3)
14 Business Days to the forwarding address, if any, on the returned envelope. If no forwarding
15 address appears on the returned envelope, then the Settlement Administrator shall perform a
16 skip trace using information provided by Defendant and, also within three (3) Business Days
17 after receiving the returned Notice Packets, shall re-mail the Notice Packets to the
18 addresses, if any, discovered through the skip trace. A returned Notice Packet will be
19 forwarded or re-mailed one time per Class Member by the Settlement Administrator. Upon
20 completion of these steps by the Settlement Administrator, the Settlement Administrator
21 shall be deemed to have satisfied its obligation to provide the Class Notice to the affected
22 Class Member. In any event, Class Members who receive Notice Packets upon a re-mailing
23 by the Settlement Administrator will not be permitted more than an additional fifteen (15)
24 calendar days from the initial 45-day deadline to dispute their share of the Net Settlement

25 _____
26 ¹ The Notice Packet consists of the Notice of Class Action Settlement ("Notice" or "Class
27 Notice") attached to the Settlement Agreement as **Exhibit A**, and the Election to be Excluded
28 from Class Action Settlement form ("Opt Out Request" or "Request for Exclusion") attached to
the Settlement Agreement as **Exhibit B**.

1 Amount, request exclusion from the Settlement, or submit an objection, as according to
2 those procedures set forth below in Section 3.04 of the Settlement Agreement.

3 No later than twenty-one (21) days prior to the Final Approval Hearing, the
4 Settlement Administrator shall provide Class Counsel and Defense Counsel with a
5 declaration attesting to completion of the notice process, including any attempts to obtain
6 valid mailing addresses for Class Members and re-sending any returned Notice Packets, the
7 number of Opt Out Requests that the Settlement Administrator received and the dates that
8 the Settlement Administrator received those Opt Out Requests, and any objections that the
9 Settlement Administrator received along with the dates the Settlement Administrator
10 received said objections. Compliance with the procedures described in this Section shall
11 constitute due and sufficient notice to Class Members of this proposed Settlement and the
12 Final Approval Hearing, and shall satisfy the requirements of due process. Nothing else
13 shall be required of, or done by, the Parties, Class Counsel, Defense Counsel, or the
14 Settlement Administrator to provide notice of the proposed Settlement and the Final
15 Approval Hearing.

16 Responses to Notice

17 Settlement Class Members are not required to submit claim forms for their share of
18 the Net Settlement Amount. Any Participating Class Member who disagrees with the data
19 used to calculate his or her claim as reflected on the Notice shall be allowed to indicate and
20 explain such disagreement. Such written dispute must be postmarked to the Settlement
21 Administrator no later than forty-five (45) days after the date the Notice is first mailed (the
22 “Dispute Deadline Date”). The Settlement Administrator shall resolve the disagreement
23 with the Participating Class Member using the employee records provided by Defendant and
24 the Class Member. In the event of a dispute or discrepancy between a Participating Class
25 Member’s records and the information reflected in Defendant's records, the records of
26 Defendant will control. The date of the postmark on the return envelope shall be the
27 exclusive means used to determine whether a Class Member has “timely” disputed the
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1 calculation or application of the formula for determining Settlement Awards. The
2 Settlement Administrator's decisions as to dates of employment and claim amounts will be
3 final.

4 Procedure for Exclusion

5 By entering into this Agreement, Named Plaintiff agrees that he is not requesting and will
6 not be requesting exclusion from the Class. The Notice shall provide that Class Members who
7 wish to exclude themselves from the Class must submit a written Opt-Out Request to the
8 Settlement Administrator requesting exclusion from the Class on or before forty-five (45) days
9 from the date the Notice is first mailed (the "Objection/Exclusion Deadline Date"). Such Opt-
10 Out Request must contain the name, address, telephone number, and last four digits of the Social
11 Security number of the person requesting exclusion, must be signed by the Class Member
12 requesting exclusion; must be returned by mail to the Settlement Administrator at a specified
13 address; and must be postmarked on or before the Objection/Exclusion Deadline Date, and must
14 contain any other language as set forth in the Notice. The date of the postmark on the return
15 mailing envelope shall be the exclusive means used to determine whether an Opt-Out Request
16 has been timely submitted. Any Class Member who opts out of the Class will not be entitled to
17 any recovery under the Settlement and will not be bound by the Settlement or have any right to
18 object, appeal, or comment on the Settlement. Class Members who fail to submit a valid and
19 timely Opt-Out Request on or before the Objection/Exclusion Deadline Date shall be bound by
20 all terms of the Settlement and any Final Judgment entered in this Class Action if the Settlement
21 is approved by the Court, including a full and final release of all claims set forth in the Action,
22 regardless of whether they have requested exclusion from the Settlement. No later than five (5)
23 days after the exclusion deadline, the Settlement Administrator shall provide Defendant' Counsel
24 with a complete list of all Class Members who have timely and properly requested exclusion
25 from the Class.

26 Procedure for Objecting

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1 By entering into this Agreement, Named Plaintiff agrees that he is not objecting to and
2 will not object to the Settlement or this Agreement. The Notice shall provide that Class
3 Members who wish to object to the Settlement must submit a written statement to the Settlement
4 Administrator objecting to the Settlement. Such written statement must be submitted to the
5 Settlement Administrator no later than forty-five (45) days after the date the Notice is first
6 mailed (the "Objection/Exclusion Deadline Date"). All objections must be in writing, must
7 include the Class Member's name, address, telephone number, and last four digits of his or her
8 Social Security number, and must state the basis on which the objections are asserted. The
9 Parties will be permitted to respond in writing to such objections within the time period set by
10 the Court. Objecting Class Members may still be heard at the final approval hearing even if they
11 have not strictly complied with the foregoing objection procedures.

12 **III. DISCOVERY AND INVESTIGATION**

13 Class Counsel has conducted a thorough investigation into the facts of this class action
14 case. Prior to settlement, the Parties conducted a substantial amount of discovery which
15 involved two Person Most Qualified depositions, the deposition of Plaintiff, approximately
16 fifteen (15) class member depositions, production and review of nearly eighty (80) class
17 member declarations, the exchange of written discovery, and production of hundreds of pages
18 of Defendant's business records relating to the claims in this litigation, including all relevant
19 policy and payroll documents. Class Counsel expended a significant amount of time opposing
20 a summary judgment motion and successfully moving for class certification. Plaintiff and
21 Class Counsel also then expended significant time on appeal, reversing the trial court's order
22 granting summary judgment as to the class claims and initiating merits-based discovery up to
23 within a few months of trial. (Rastegar Decl., ¶ 10).

24 The Parties also completed two separate private mediations, during the last of which
25 Defendant produced the last 3 years of its tax returns, including tax forms disclosing officer
26 compensation, depreciation and amortization of assets, Form 1120S documents showing
27 company deductions and expenses, and Schedule K-1 forms, all of which demonstrated
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1 Defendant's limited financial ability to pay a potential classwide judgment beyond the Gross
2 Settlement Fund without risking bankruptcy. Based on their own independent investigation
3 and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the
4 consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and
5 adequate and is in the best interest of the Settlement Class in light of all known facts and
6 circumstances, including the risk of significant delay, the risk the Settlement Class will lose at
7 trial, defenses asserted by Defendant, and numerous potential appellate issues after trial.
8 (Rastegar Decl., ¶ 11).

9 Accordingly, Plaintiff has obtained detailed discovery on both liability and damages to
10 act intelligently and effectively in negotiating the proposed settlement, and to provide this
11 Court sufficient evidence to determine adequacy of the settlement. *Kullar v. Foot Locker*
12 *Retail, Inc.*, 168 Cal. App. 4th 116, 131-33 (2008); *Reynolds v. Benefit Nat'l Bank*, 288 F.3d
13 277, 284-85 (7th Cir. 2002).

14 **IV. CONDITIONAL CLASS CERTIFICATION**

15 The Parties propose that the Court conditionally, pursuant to the terms of the
16 Settlement Agreement, certify the following class of plaintiffs: Any and all of Defendant's
17 hourly, non-exempt employees in California from August 16, 2009 through December 7,
18 2017, and who did not opt out of the class. Specifically, the number of Class Members is
19 based on the class list produced by Phoenix Settlement Administrators, comprised of 265
20 individuals, after the final date of the opt out period on December 7, 2017. The Class
21 Period for these individuals ends on the date of preliminary approval of the Settlement.

22 The two primary requirements necessary to maintain a California class action are: (1) an
23 ascertainable class, and (2) a well-defined community of interest in the questions of law and fact
24 involved affecting the parties to be represented. *Daar v. Yellow Cab Company*, 67 Cal.2d 695,
25 704 (1967). These requirements are generally more broadly expressed as the elements of (1)
26 numerosity of class members, (2) typicality of claims, (3) adequacy of representation by the
27 named plaintiffs, and (4) the superiority and predominance of common questions of law and fact.

1 In fact, these four elements are considered under the Consumer Legal Remedies Act, Civil Code
2 § 1781 (b), which has been specifically approved by the California Supreme Court as the
3 standard for determining whether the requirements of certification under C.C.P. § 382 have been
4 met. *Vasquez v. Sup.Ct.*, 4 Cal.3d 800, 820 (1971).

5 In this case, the Court has already granted class certification as to Plaintiff's rest period
6 cause of action and derivative claims arising thereto. For purposes of this Settlement and the
7 release contained herein, the Parties also seek conditional certification of Plaintiff's meal period,
8 minimum wage and overtime causes of action and, thus, all of the claims are applicable to the
9 class as a whole. Therefore, prosecution of this lawsuit as a class action is appropriate and
10 desirable as an effective and efficient manner in which to remedy a pervasive wrong. *Richmond*
11 *v. Dart Industries, Inc.*, 29 Cal.3d 462, 477-478 (1981). A judicial policy favoring the
12 maintenance of appropriate class actions has increasingly been emphasized as serving an
13 important function in our judicial system and society. Class actions can prevent a defendant
14 from avoiding exposure for wrongful conduct simply because individual victims may lack the
15 financial sophistication, financial motivation or resources to sue on their own. *Vasquez v. Sup.*
16 *Ct., supra*, 4 Cal.3d at 807-808. In this case, the Class Members are low-level hourly employees,
17 many of whom speak limited English, and therefore are unlikely to assist in the prosecution of
18 these cases for fear of losing their jobs. Therefore, the chances that any more than a small
19 fraction of class members would pursue their claims individually is virtually non-existent.

20 In this case, the requirements for class certification are clearly present.

21 **A. Numerosity of Class Members**

22 The Court's order granted class certification as to 299 class members, 34 of which chose
23 to opt out of the Class, leaving a total of 265 Class Members. (Rastegar Decl., ¶¶ 7 and 9).

24 **B. Typicality of Claims**

25 The claims of Class Members are essentially identical: meal and rest periods, minimum
26 wage and overtime claims, and derivative claims for failure to maintain accurate wage
27 statements, failure to pay all wages due to discharged or terminated employees, and unfair
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1 business practices, as a result of the rest period policies which Plaintiff alleges do not comply
2 with California wage and hour requirements.

3 **C. Adequacy of Representation by Named Plaintiff**

4 Plaintiff has been instrumental in providing critical information and evidence used to
5 establish the existence of the alleged unlawful practices pertaining to all the hourly, non-exempt
6 employees. Plaintiff provided pre-litigation information to his attorneys that helped identify, not
7 only the claims, but also specific common practices among class members and how they affected
8 him and his co-workers. Plaintiff also provided information for use in preparing for mediation
9 and the motion for class certification, by assisting Class Counsel in clarifying important written
10 policies, and time-keeping and break scheduling practices, as well as providing a full day of
11 deposition testimony. Plaintiff also attended the motion for class certification and motion for
12 summary judgment hearings, the mediation, and was critical in bringing about the Settlement
13 Agreement. (Declaration of Juan Rodriguez (“Rodriguez Decl.”), ¶ 5); (Rastegar Decl., ¶ 12).
14 In the final analysis, this Class Action would not have been possible without the aid of Plaintiff
15 Juan Rodriguez, who put his own time and effort into this litigation, sacrificed the value of his
16 own individual claims, waited through six years of litigation, and placed himself at risk for the
17 sake of the class members. (Rodriguez Decl.”), ¶¶ 4-6; Rastegar Decl., ¶ 12). Moreover,
18 Plaintiff’s name and personal allegations are memorialized in the Complaint thus exposing himself to
19 potential liability for costs and industry/employer blacklisting. (*Id*). Specifically, after the Court
20 granted Defendant's Motion for Summary Judgment, this Court awarded several thousands of
21 dollars in costs to be paid personally by Plaintiff, who ultimately fought through a successful
22 appeal on the underlying issues, resulting in a reversal of the trial court's rulings and a published
23 opinion, creating new California law pertaining to the scheduling of rest periods. (*Id*). As such,
24 the requested incentive award of \$10,000.00 to the Plaintiff, less than 1.8% of the Gross
25 Settlement Fund, should be considered a bare minimum amount that is sufficiently reasonable to
26 compensate Plaintiff for his active participation in this particular lawsuit. (*Id*).

27 **D. The Superiority and Predominance of Common Questions of Law and Fact**

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1 There would appear to be no questions of law which would vary from employee to
2 employee. Additionally, the only factual questions would be in the area of damages. Finally,
3 Defendant has conditionally stipulated for purposes of settlement only, that class certification is
4 appropriate for all claims, including Plaintiff's meal period, minimum wage, and overtime
5 claims.

6 **V. THE PROPOSED SETTLEMENT FULLY SATISFIES THE STANDARDS FOR**
7 **PRELIMINARY APPROVAL.**

8 The review and approval of a proposed class action settlement generally involves a two-
9 step process. *See* Cal. Rule of Court, Rule 3.769(c); *Armstrong v. Board of School Directors of*
10 *City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)(overruled on other grounds in *Felzen v.*
11 *Andreas*, 134 F.3d 873, 875 (7th Cir. 1998)).² In the first step, counsel submits the proposed
12 terms of settlement and the Court makes a preliminary assessment of whether the settlement
13 appears to be sufficiently within the range of a fair settlement to justify providing notice of the
14 proposed settlement to class members. In the second step, the Court must conduct an inquiry
15 into whether the proposed settlement is fair, reasonable and adequate. *Id.*

16 The initial evaluation of the settlement at the preliminary approval step “is not a fairness
17 hearing.” *Armstrong, supra*, 616 F. 2d at 314. Rather the limited purpose of this initial inquiry
18 is to determine, at a threshold level, only whether the proposed settlement is within the range of
19 possible approval (the range of “reasonableness”) and, as a result, “whether there is any reason to
20 notify the class members of the proposed settlement and to proceed with a fairness hearing.” *Id.*
21 *See also In re Mid-Atlantic Toyota Antitrust Litigation*, 564 F. Supp. 1379, 1384 (D.C. Md.
22 1983).

23 A presumption of fairness exists where: (1) the settlement is reached through arm's
24 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
25 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of

26 ²While California courts are not bound by federal cases decided under Federal Rule of
27 Civil Procedure, they may look to federal cases for guidance. *See Wershba v. Apple*
28 *Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 239-40

1 objectors is small. *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven*
2 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000).

3 The proposed settlement in this case is fair, reasonable and in the best interests of the
4 class. The parties arrived at this settlement, through arm's length bargaining, following two full
5 days of meditation, first with mediator Steven Pearl, Esq. and second with mediator Lynn Frank,
6 Esq. The parties went into mediation and informal negotiations willing to explore the potential
7 for a settlement of the dispute, but each side was also committed and prepared to litigate its
8 position through trial and appeal if a settlement had not been reached. The proposed settlement
9 was reached at the end of an arms-length negotiation process, in which counsel for all parties
10 advanced their respective positions throughout the settlement negotiations, regarding the merits
11 of the case for trial and Defendant's financial ability to pay a classwide judgment. (Rastegar
12 Decl., ¶¶ 8, 10-11).

13 Additionally, Class Counsel has conducted a thorough investigation into the facts of this
14 class action case. Prior to settlement, the Parties conducted a substantial amount of discovery
15 which involved two Person Most Qualified depositions, the deposition of Plaintiff,
16 approximately fifteen (15) class member depositions, production and review of nearly eighty
17 (80) class member declarations, the exchange of written discovery, and production of hundreds
18 of pages of Defendant's business records relating to the claims in this litigation, including all
19 relevant policy and payroll documents. Class Counsel expended a significant amount of time
20 opposing a summary judgment motion and successfully moving for class certification. Plaintiff
21 and Class Counsel also then expended significant time on appeal, reversing the trial court's order
22 granting summary judgment as to the class claims, resulting in new California law, and initiated
23 merits-based discovery up to within a few months of trial. (Rastegar Decl., ¶ 10).

24 The Parties also completed two separate private mediations, during the last of which
25 Defendant produced the last 3 years of its tax returns, including tax forms disclosing officer
26 compensation, depreciation and amortization of assets, Form 1120S documents showing
27 company deductions and expenses, and Schedule K-1 forms, all of which demonstrated
28

1 Defendant's limited financial ability to pay a potential classwide judgment beyond the Gross
2 Settlement Fund without risking bankruptcy. (Rastegar Decl., ¶ 11).

3 Based on these efforts, Class Counsel was able to act intelligently and effectively in
4 negotiating the proposed settlement.

5 Furthermore, Class Counsel is experienced, respected members of the bar with strong
6 records of vigorous and effective advocacy for their clients, and in handling complex wage and
7 hour class action litigation. (Rastegar Decl., ¶¶ 24-30). Plaintiff and Class Counsel were
8 prepared to finish litigating the claims in the action through trial, but they supported the proposed
9 settlement as being in the best interests of the proposed class and there is no reason to believe
10 there will be any objectors. Therefore, the standards of preliminary approval are fully met.

11 Finally, the Gross Settlement Fund of \$550,000.00 amounts to approximately \$2,075.47
12 per full-time employee. Moreover, from the Plaintiff's perspective, there are several factors
13 motivating settlement and compromise of the classes' possible recovery.

14 **A. The Settlement is Fair and Reasonable Given Maximum Potential Recovery and**
15 **Accompanying Risks of Continued Litigation**

16 **1. Damage Analysis – Rest Periods**

17 Based upon information provided by Defendant, there are a total of approximately 125
18 currently employed Class Members at any given and about an average of \$12 per hour, during
19 the Class Period. Since the Court granted summary judgment as to Plaintiff's meal period claim,
20 Plaintiff gives it little, if any value. Likewise, with respect to Plaintiff's minimum wage and
21 overtime claims, there is no derivative value to these claims based on Plaintiff's rest period
22 theory of liability, as it was contingent on Plaintiff's meal period theory of liability. Therefore,
23 even though the Court of Appeal reversed summary judgment on these claims as well, Plaintiff
24 still gives them little, if any, value. With this data in mind, Plaintiff can calculate the highest
25 reasonable potential recovery for damages as follows:

26 Rest Break Violations:

27 100% violation rate (no second rest break ever provided per company policy)

28 x 5 shifts per week

1	x	50 weeks per year
2	x	\$12.00
3	x	125 employees
4	x	8.33 years

5

6 **\$3,123,750.00**

7 (Rastegar Decl., ¶ 13).

8 **2. Penalties**

9 Plaintiff and all similarly situated putative class members are also entitled to civil
10 penalties as a result of the penalties for the violations set forth above.

11 1. California Labor Code § 2699 (Rest Periods)

12 Under Labor Code §2699, for its failure to provide rest periods as required by IWC Order 5-2001
13 and Labor Code § 226.7, Defendant is liable for each illegal practice and is subject to \$100 for
14 each initial violation for each employee for each pay period. Defendant is therefore subject to
15 the following penalties for each of the practices described: 125 employees x \$100.00 per
16 employee x 26 pay periods x 9 years = **\$2,925,000.00**

17 2. Labor Code § 1174.5

18 For its failure to maintain accurate payroll records, by not accounting for premium payments
19 owed to class members, Defendant is liable for Labor Code §1174.5 penalties calculated as
20 follows: 125 employees x \$500.00 per employee x 9 years = **\$562,500.00**

21 3. California Labor Code § 203

22 For failure to pay its employees all earned and unpaid wages to discharged or quitting employees
23 in a timely fashion, Defendant is liable for waiting time penalties. Under California Labor Code
24 § 203, the wages of the discharged or quitting employee continue as a penalty from the due date
25 at the same rate until paid for up to 30 days. For purposes of these penalties, Plaintiff estimates
26 that the number of discharged or quitting employees in the putative class is about 50. Based on

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1 this, the calculations are as follows: \$12.00 average wage x 8 hours per day x 30 days x 140
2 former employees = **\$403,200.00**

3
4 **Total Penalties = \$3,890,700.00**

5 (Rastegar Decl., ¶ 14).

6 As a result of the above, Plaintiff contends that Defendants' exposure for damages and
7 penalties is **\$7,014,450.00**. Defendant contends that the exposure is \$0.00. In assessing the
8 fairness of the settlement, Plaintiff had to be cognizant of the risk of a zero-dollar damage and
9 penalty award in this case. (Rastegar Decl., ¶ 15).

10 **3. Risks of Litigation**

11 ***a. Loss at Trial***

12 Although Plaintiff is confident that any trial could be meritorious and successful, he is
13 not blind to the significant risk of losing such a trial, including the enormous costs, and
14 potentially the hurdle that must be overcome on appeal: an abuse of discretion standard.
15 Further, Plaintiff has asserted claims in the litigation relying on an "all or nothing" legal
16 question to which the California Court of Appeal has indicated could fall in Defendant's favor,
17 based squarely on the facts it presented, if fully credited. *Rodriguez v. E.M.E., Inc.* (2016) 246
18 Cal.App.4th 1027, 1042. In *Rodriguez*, the Court of Appeal considered the trial court's Order
19 granting Defendant's summary judgment motion on the issue of Defendant's combined 20-
20 minute rest break schedule policy. In support of that motion, Defendant proffered evidence
21 that the preferred schedule of providing two, 10-minute rest periods on either side of a 30-
22 minute meal period would unduly burden its production processes because workers ordinarily
23 required ten minutes to shut down machinery and/or prepare for breaks and upon returning
24 from those breaks. *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th at 1042. While reversing the
25 trial court's ruling, the Court of Appeal stated that "E.M.E.'s showing in support of its rest
26 break schedules, if fully credited, would suffice to support its departure from the preferred
27 schedule." *Id.* As such, this was the most heavily contentious and litigated issue in this matter,

1 for which the Parties were completing discovery, and about which Plaintiff contends that
2 Defendant would ultimately fail at trial. However, as indicated by the Court of Appeal, a
3 reasonable trier of fact could construe otherwise. (Rastegar Decl., ¶ 16).

4 Furthermore, Defendant procured declarations from a majority of the current
5 employees, prior to class certification, who testified to satisfaction with Defendant's break
6 schedule. Though that would not have been a determinative factor for liability, it would have
7 been evidence in support of a showing of the first element in *Rodriguez*, justifying a departure
8 from the preferred schedule. *Rodriguez v. E.M.E., Inc.*, 246 Cal.App.4th at 1040-41.
9 (Rastegar Decl., ¶ 17). This evidence also included testimony about their satisfaction with
10 Defendant's provision of meal periods, for which the Court granted summary judgment and the
11 Court of Appeal did not reverse. (*Id.*).

12 Moreover, Plaintiff has alleged claims asserting a violation of Labor Code Section 201-
13 203 penalties. These portions of the Labor Code provide for penalties up to a maximum of
14 thirty (30) days of pay if an employer fails to pay an employee all wages due upon separation
15 of employment. This claim is derivative of the meal and rest period claims inasmuch as
16 Plaintiff asserts that meal and rest period penalties arising from Defendant's scheduling and
17 payroll practices, were due and owing, and not paid to all of the separated class members. The
18 problem in proving this claim is that Plaintiff must establish the failure to pay the wages due at
19 the time of separation was *willful*. Given the legally undetermined and evolving nature of an
20 employer's obligations with regard to the mere scheduling of meal and rest periods, Defendant
21 has a potentially insurmountable argument that it had a good faith belief at the time of the
22 applicable class members' separation from employment it was not obligated to pay them for
23 any missed meal and rest periods, and its failure to have done so was not willful. (Rastegar
24 Decl., ¶ 18).

25 ***b. PAGA Claim***

26 Plaintiff has alleged claims that the company is liable for civil penalties under the
27 Private Attorney's General Act of 2004 ("PAGA"). However, penalties are discretionary and,
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1 thus, uncertain. PAGA also allows a court to reduce civil penalties that are “unjust, arbitrary,
2 oppressive, or confiscatory.” Labor Code §2699(e)(2). Further, if the employer can show a
3 lack of willfulness in the violation, the court may further reduce the civil penalties. Given the
4 uncertain nature of the underlying claims, the value of the claims under this statute are
5 significantly lower. In connection with that, the parties agreed to allocate only a small
6 percentage of the Gross Settlement Fund to penalties in order for class members to receive a
7 greater amount of money in the settlement, instead of the State of California. A greater
8 allocation of penalties would be unjust, arbitrary, and oppressive to the Class for the same
9 reasons. (Rastegar Decl., ¶ 19).

10 ***c. Brinker Case***

11 *Brinker Restaurant Corp. vs. Superior Court*, 53 Cal. 4th 1004 (2012) was decided by
12 the California Supreme Court in 2012 and remains controlling law. The decision in *Brinker*,
13 though favorable in many aspects, adopted a “provide” standard for breaks as opposed to an
14 “ensure” standard, creating a slightly higher bar relating to Plaintiff’s meal and rest period
15 claims. (Rastegar Decl., ¶ 20).

16 ***d. Other Impediments to a Successful Outcome***

17 First, the Court already granted Defendant's summary judgment motion pertaining to
18 meal periods, to which the Court of Appeal upheld, thereby giving this claim little, if any,
19 value whatsoever. (Rastegar Decl., ¶ 21).

20 Second, Defendant produced a significant amount of financial records, including tax
21 forms disclosing officer compensation, depreciation and amortization of assets, Form 1120S
22 documents showing company deductions and expenses, and Schedule K-1 forms, all of which
23 demonstrated Defendant's limited financial ability to pay a potential classwide judgment
24 beyond the Gross Settlement Fund without risking bankruptcy. As such, even winning at trial
25 on the rest period claim and procuring a more substantial monetary judgment than the Gross
26 Settlement Fund would likely require wasted time, effort, and resources, to collect on behalf of
27 Class Members. (Rastegar Decl., ¶¶ 11 and 22). Moreover, in order to create a larger fund for
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1 Class Members in this case, the Parties have agreed to a payment plan over the course of fifty-
2 four months, after Defendant's initial payment of \$150,000.00. (Rastegar Decl., ¶ 22).
3 Without this type of settlement structure, or otherwise with a single, lump sum payment due
4 upon final approval, the Gross Settlement Fund would have had to been significantly lower.
5 (Id). Thus, Plaintiff is of the opinion that the Gross Settlement Fund is fair, reasonable and in
6 the best interests of the class. (Rastegar Decl., ¶ 23).

7 **VI. THE CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE AND**
8 **STANDARD IN CLASS ACTIONS**

9 The Settlement Agreement provides for an enhancement for the Named Plaintiff Juan
10 Rodriguez in the amount of \$10,000.00. The information provided by Plaintiff was
11 instrumental in pursuing the wage and hour violations alleged in this action, and the
12 recovery provided for in the Settlement Agreement would have been impossible to obtain
13 without his willingness to act as class representatives. “Incentive awards are fairly typical
14 in class actions.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010)
15 (internal quotation marks and citations omitted). “The rationale for making enhancement or
16 incentive awards to named plaintiffs is that they should be compensated for the expense or
17 risk they have incurred in conferring a benefit on other members of the class.” *Id.* at 1394.

18 For example, Plaintiff provided valuable information regarding missed meal and rest
19 periods, time-keeping and other policies and practices for Defendant’s employees.
20 Specifically, Plaintiff: I) had meetings with and provided information and documents to
21 Class Counsel that helped identify, not only the claims, but also specific common practices
22 among class members and how they affected him and his co-workers; II) prepared for and
23 attended a full day of his deposition; III) helped prepare for and attended mediation; III)
24 provided his sworn declaration in support of the motion for class certification, in opposition
25 to Defendant's summary judgment motion, and the instant motion for preliminary approval;
26 IV) attended the motion for class certification and summary judgment hearings; V) agreed
27 to continue litigating through a cost judgment against him and ultimately a successful
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1 appeal; and VI) provided approval for the settlement which was ultimately achieved after
2 nearly six years. (Rastegar Decl., ¶ 12; Rodriguez Dec. Decl., ¶¶ 4-6).

3 In the final analysis, these actions would not have been possible without the aid of the
4 Plaintiff Juan Rodriguez, as Class Representative, who put his own time and effort into this
5 litigation, while foregoing his individual claims, and placed himself at personal risk for the sake
6 of the class members. The requested Enhancement Payment is small in proportion to the Gross
7 Settlement Fund, representing in the aggregate only 1.8% of the Gross Settlement Fund. This is
8 well within the range of reasonableness recognized by the courts. *See, e.g., In re Mego Fin.*
9 *Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming enhancement awards
10 comprising 0.57% of the settlement fund); *Hopson v. Hanesbrands Inc.*, 2009 WL 928133 at *
11 10 (N.D. Cal. Apr. 3, 2009) (granting final approval of a settlement providing for enhancement
12 payments that represented 1.25% of the settlement fund); *see also Martin v. AmeriPride Svcs.*,
13 *Inc.*, 2011 WL 2313604 at * 9 (awarding \$148,000.00 in enhancement payments out of a
14 settlement of \$5.25 million, or 2.8% of the total settlement amount); *Smith v. Cardinal Logistics*
15 *Mgmt. Corp.*, 2011 WL 3667462, at *5 (awarding enhancement payments of \$15,000 to each of
16 three named plaintiffs out of a settlement of \$3.75 million, or 1.2% of the total settlement
17 amount).

18 An enhancement of \$10,000.00 is a fair amount of money when the vast amount of time,
19 effort, and personal financial risk put into this litigation by Mr. Juan Rodriguez are considered,
20 and compared to enhancements granted in other class actions. Courts routinely grant approval of
21 class action settlement agreements containing enhancements for the Class Representatives which
22 are necessary to provide incentive to represent the class and appropriate given the benefit the
23 class representatives help to bring about for the class. Enhancements are especially appropriate
24 where the plaintiff is a present or past employee whose present position or employment
25 credentials or recommendation may be at risk by reason of having prosecuted the suit who,
26 therefore, lends his or her name and efforts to the prosecution of litigation at some personal peril.
27 *Roberts v. Texaco*, 979 F.Supp.185 (S.D.N.Y. 1997). In this case, obtaining recovery for the
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1 class would have been impossible without the active participation and involvement of the Class
2 Representative.

3 An incentive award of \$10,000.00 to Plaintiff and Class Representative Juan Rodriguez is
4 more than reasonable to compensate him for his willingness to pursue and assist in this litigation,
5 which would not have been possible without his contributions.

6 **VII. ATTORNEYS' FEES AND COSTS**

7 **A. Class Counsel's Requested Attorneys' Fees Are Reasonable under the** 8 **Circumstances of this Case**

9 The Settlement Agreement provides for attorneys' fees and costs to Class Counsel of up
10 to \$183,150.00 (or one-third of the Gross Settlement Fund). The contingency fee percentage is
11 less than Class Counsel's contingency fee percentage charged in other employment cases.
12 (Rastegar Decl. ¶ 36). The fee is supported by the "common fund theory" where "one who
13 expends attorneys' fees in winning a suit which creates a fund from which others derive benefits,
14 may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v.*
15 *Priest*, 20 Cal.3d 25, 35 (1977). See also *Quinn v. State of California*, 15 Cal.3d 162 (1975), and
16 *Samura v. Kaiser Foundation Health Plan, Inc.*, 17 Cal.App.4th 1284 (1993). The percentage of
17 the gross fund method of calculation is supported by a number of federal cases, including *Boeing*
18 *v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mashburn v. National Healthcare, Inc.*, 684 F. Supp.
19 679 (1988); *In re Hill*, 775 F.2d 1037 (9th Cir. 1985). The percentage is also properly based
20 upon the gross settlement, rather than on upon the amount of claims made. *Williams v. MGM-*
21 *Pathe Communications Co.*, 129 F.3d 1026 (9th Cir. 1997); *Boeing v. Van Gemert, Id.*

22 Attorney fee applications in California class actions based upon a percentage of a
23 common fund now have substantial support by the Ninth Circuit Court of Appeals, as well as
24 various state courts. See, e.g., *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268 (9th Cir.
25 1989); and *Washington Public Power Supply Secur. Lit. v. City of Seattle*, 19 F.3d 1291 (9th Cir.
26 1994). Other Federal Courts of Appeals, such as the Eleventh Circuit and the D.C. Circuit, now
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1 mandate use of the percentage method. *Camden I Condominium Ass’n v. Dunkle*, 946 F.2d 768,
2 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993).

3 In the case at hand, the fee and costs provision is clearly reasonable. The law firm
4 serving as Class Counsel is qualified to handle this litigation because its members are
5 experienced in litigating Labor Code violations in both single and class actions.

6 Counsel for Plaintiff Juan Rodriguez, Rastegar Law Group, consists of seven attorneys,
7 all of whom are actively and continuously practicing in employment litigation, representing
8 almost entirely employee plaintiffs, in both individual and class actions, in Superior Courts
9 throughout the State, in the Court of Appeal, and in various Federal courts. (Rastegar Decl. ¶
10 27).

11 Additionally, Class Counsel’s out-of-pocket costs for this case are almost \$30,000.00 at
12 the present time. (Rastegar Decl. ¶ 34). Indeed, the efforts of Class Counsel have resulted in
13 substantial benefits to the settlement class in the form of a substantial settlement fund established
14 to compensate settlement class members. The percentage fee requested (one-third of the Gross
15 Settlement Fund) is reasonable given the result achieved.

16 Thus, Class Counsel are “qualified, experienced, and generally able to conduct the
17 proposed litigation” as required under existing law. *Miller v. Woods* (1983) 148 Cal. App. 3d
18 862, 874.

19 **VIII. CONCLUSION**

20 For the reasons set forth above, Plaintiff respectfully requests that the Court: (1) grant
21 preliminary approval for the proposed class action settlement; (2) authorize the mailing of the

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1 proposed notice to the class of the settlement; and (3) schedule a “fairness hearing,” i.e. a hearing
2 on the final approval of the settlement.

3 Respectfully submitted,

4 Dated: August 10, 2020

RASTEGAR LAW GROUP

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