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and VICTOR HAZLETT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DEREK L. MCGHEE and VICTOR
HAZLETT, on behalf of themselves and others
similarly situated,

Plaintiff,

v.

TESORO REFINING & MARKETING
COMPANY LLC; ANDEAVOR; ANDEAVOR
LOGISTICS LP; MARATHON REFINING
LOGISTICS SERVICES LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No. 4:18-cv-05999-JSW

Assigned For All Purposes to the Honorable
Jeffrey S. White, Courtroom 5

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: May 16, 2025

Time: 9:00 a.m.

Courtroom: 5

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

Plaintiffs Derek L. McGhee and Victor Hazlett (“Plaintiffs”) hereby gives Notice that on Friday, May 16, 2025 at 9:00 a.m., in Courtroom 5 of the 2nd Floor of the Ronald V. Dellums Federal Building & United States Courthouse located at 1301 Clay Street, Oakland, California 94612 in the District Court for the Northern District of California, Plaintiffs will move and hereby do move the Court to enter the concurrently filed [Proposed] Order seeking the following:

(1) Granting preliminary approval of the proposed class action settlement, including the amount of the settlement; the amount and methodology pertaining to distributions to the class; the procedure for giving notice to class members; the procedure for allowing class members to opt out of and object to the settlement; and estimated administrative costs;

(2) Provisionally certifying the proposed Class for settlement purposes only;

(3) Approving the form and content of the class notice and directing the distribution of the class notice;

(4) Appointing Joseph Lavi, Jordan Bello, Vincent Granberry, and Eve Howe from Lavi & Ebrahimian, LLP as Class Counsel and named Plaintiffs Derek L. McGhee and Victor Hazlett as Class Representatives;

(5) Appointing CPT Group, Inc. as settlement administrator; and

(6) Setting a Final Approval Hearing and hearing on Class Counsel’s Attorney Fees and Cost award and Class Representatives’ Service Awards for a date on or after September 19, 2025¹ or as soon thereafter as is acceptable and convenient to the Court.

Plaintiffs’ motion is based on this Notice, the stipulation for settlement, memorandum of points and authorities; and Declaration of Eve Howe concurrently filed herewith; all other pleadings

¹ A September 19, 2025 hearing date or later accommodates the following: (1) “21 calendars days” (i.e., from preliminary approval) for the Defendant to provide a “class list” to the Settlement Administrator (Howe Dec. Ex. 1, § 76); (2) “14 calendar days” after the “class list” is provided for the Settlement Administrator to mail Settlement Notices to the putative class (*id.*, Ex. 1, § 77(a)); (3) 45 calendar days from mailing for putative class members to submit objections/requests for exclusion (*id.*, Ex. 1, § 77(c)); (4) 35 days’ notice for the motion for final approval of class action settlement (N.D. Cal. Civ. R. 7-2(a)).

1 and papers on file in this action; and any other argument or other matter that may be considered by
2 the Court.

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Dated: April 7, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: /s/ Eve Howe
Joseph Lavi, Esq.
Jordan D. Bello, Esq.
Vincent C. Granberry, Esq.
Eve Howe, Esq.
Attorneys for PLAINTIFFS
DEREK L. MCGHEE, VICTOR HAZLETT,
and Other Class Members

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Derek L. McGhee and Victor Hazlett (“Plaintiffs”) respectfully submit this memorandum in support of their motion for preliminary approval of the proposed no claims and non-reversion class action settlement (the “Settlement Agreement”) with Defendants TESORO REFINING & MARKETING COMPANY LLC; ANDEAVOR; ANDEAVOR LOGISTICS LP; and MARATHON REFINING LOGISTICS SERVICES LLC (hereinafter collectively referred to as “Defendants”). Plaintiffs seek entry of a proposed order granting preliminary approval of the Settlement Agreement which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form and method for providing notice and directs that notice be given to Class Members; (3) preliminarily certifies the class for settlement purposes only; and (4) schedules a final approval hearing date. Defendants shall pay a non-reversionary amount of \$7,200,000 (the “Settlement Fund”) to fund a settlement to be distributed to current and former unionized hourly non-exempt employees employed by Defendants at the Carson, Wilmington, and Martinez refineries and Martinez chemical plant from August 17, 2014 to July 12, 2024. (Howe Dec. Ex. 1, §§ 19, 20.)

The Net Settlement Proceeds is the portion of the Settlement Fund remaining after deductions for Attorneys’ Fees (which will be requested by Class Counsel up to \$2,520,000), Attorneys’ Costs (which will be requested by Class Counsel up to \$100,000), payment to the California Labor and Workforce Development Agency (“LWDA”) under the Private Attorneys General Act (“PAGA”) (requested at \$75,000 to the LWDA), Administrative Costs (estimated at \$20,000), and Service Awards to Class Representatives McGhee and Hazlett (requested at \$10,000 each). (Howe Dec. Ex. 1, §§ 44, 49, 55, 56, 60.) If the Court approves these requested amounts, the total amount to be distributed to the Class Members is estimated to be \$4,465,000. (Howe Dec. Ex. 1, § 60.)

The Court should grant conditional certification and preliminary approve the fair and reasonable settlement of this long-pending employment class action.

II. BACKGROUND

A. The Actions

On August 17, 2018, Plaintiff McGhee filed a class complaint against Defendants Tesoro

1 Refining & Marketing Company, LLC; Andeavor; and Andeavor Logistics LP in Contra Costa
2 County Superior Court.² See *McGhee v. Tesoro Refining & Mktg. Co. LLC*, Case No. C18-01699 (the
3 “*McGhee Action*”). On September 28, 2018, Tesoro, Andeavor, and Andeavor Logistics removed the
4 *McGhee Action* to federal court. See N.D. Cal. Case No. 4:18-cv-05999-JSW, ECF No.1. The
5 operative Third Amended Complaint alleges that the defendants violated California’s wage and hour
6 laws by not providing rest breaks and failing to pay premium wages for missed rest breaks; by
7 disincentivizing off-premises meal periods and by failing to pay premium wages for missed meal
8 periods; by failing to pay wages for all time worked at the minimum wage rate by engaging in
9 rounding practices; by failing to pay wages for all time worked at the minimum wage rate for shift
10 turnover duties; by failing to timely pay wages due at the time of termination; and by failing to provide
11 accurate wage statements. In addition to alleging violations of the California Labor Code, the
12 complaint also asserted claims under California Business & Professions Code section 17200 and
13 PAGA, California Labor Code section 2698 *et seq.*, based on the same alleged Labor Code violations.
14 (Howe Dec. ¶ 4.)

15 On April 22, 2021, Plaintiff Hazlett, represented by the same counsel as McGhee, filed a
16 putative class action complaint against Defendant Marathon Refining Logistics Services LLC in
17 Contra Costa County Superior Court. See *Hazlett v. Marathon Refining Logistics Servs. LLC*, Case
18 No. C21-00808 (The “*Hazlett Class Action*”). On June 3, 2021, Marathon removed the *Hazlett Class*
19 *Action* to federal court. See N.D. Cal. Case No. 3:21-cv-04238-EMC, ECF No. 1. The complaint in
20 the *Hazlett Class Action* asserts the same claims as the *McGhee Action*, but for a later time period. It
21 additionally expands the claim for failure to provide rest breaks and pay rest break premium wages
22 from lab technicians only to all hourly non-exempt employees. (Howe Dec. ¶ 5.)

23 On July 20, 2021, Hazlett, again represented by the same counsel as McGhee, filed a PAGA
24 complaint against Marathon in Contra Costa County Superior Court. See *Hazlett v. Marathon*
25 *Refining Logistics Servs. LLC*, Case No. C21-01534 (the “*Hazlett PAGA Action*”). The complaint in
26 the *Hazlett PAGA Action* asserts a PAGA claim based on the same alleged wage-and-hour violations

27
28 ² Tesoro Refining & Marketing Company, LLC, Andeavor, and Andeavor Logistics LP were acquired
by the same parent corporation over Marathon Refining Logistics Services LLC.

at issue in the *Hazlett* Class Action. (Howe Dec. ¶ 6.)

On September 6, 2022, Hazlett and Marathon jointly requested a stay of the *Hazlett* Class Action pending a class certification ruling in the *McGhee* Action, and the court in the *Hazlett* Class Action granted on September 7, 2022. On February 14, 2023, this Court granted Plaintiffs' motion for class certification in the *McGhee* Action. Dkt. 116. (Howe Dec. ¶ 7.)

B. The Mediation

Given the overlap between the claims asserted in the *McGhee* Action, the *Hazlett* Class Action, and the *Hazlett* PAGA Action, and the fact that the same counsel represents Plaintiffs McGhee and Hazlett, the Parties decided to mediate all three actions together. On October 26, 2023, the Parties participated in an unsuccessful mediation with mediator Hunter Hughes. On May 20, 2024, the Parties participated in a mediation with experienced labor and employment mediator Monique Ngo-Bonnici. Following mediation, the parties continued arms-length negotiations. On June 25, 2024, Mediator Ngo-Bonnici issued a modified mediator's proposal, which was accepted by both parties on July 12, 2024. Subsequently, the Parties fully executed a long-form Joint Stipulation of Class Action Settlement and Release (the "Settlement") on February 4, 2025. (Howe Dec. ¶ 8.)

As stipulated in the Settlement, Plaintiffs filed a Joint Stipulation for Leave to File a Consolidated Third Amended Complaint ("CTAC") in the *McGhee* Action on April 7, 2025 that adds the class claims from the *Hazlett* Class Action and the PAGA claims from the *Hazlett* PAGA Action and adds Marathon as a defendant. (Howe Dec. ¶ 9.)

Plaintiffs' counsel diligently investigated the proposed Class Members' claims against Defendants, including all applicable defenses and the applicable law. The settlement discussions before, during and after the mediation were conducted at arm's length and included, inter alia, the exchange of information pursuant to both formal and informal discovery methods and subsequent analysis by Plaintiffs' counsel and Plaintiffs' expert. The litigious procedural history of this consolidated action further confirms the non-collusive nature of the settlement. (Howe Dec. ¶ 10.)

C. Overview of the Proposed Settlement

Subject to Court approval, the Parties have agreed to settle the lawsuit based on the terms and conditions set forth in the proposed Settlement, a copy of which is attached to the Declaration of Eve

Howe as Exhibit 1. The “Settlement Class” includes “all current and former unionized hourly non-exempt employees employed by Defendants at the Carson, Wilmington, and Martinez refineries and Martinez chemical plant from August 17, 2014, to July 12, 2024.” (*Id.* Ex. 1, § 19.) In exchange for a release of claims described in Section VI of the proposed Settlement, Defendants agree to pay a non-reversionary gross settlement amount of \$7,200,000, exclusive of Defendants’ share of any applicable federal, state, and local payroll taxes. (*Id.* Ex. 1, § 20.) A Net Settlement Fund of approximately \$4,465,000 will be distributed to the settlement class based on shifts worked, after deducting Class Counsel’s attorneys’ fees (requested up to \$2,520,000) and costs (requested up to \$100,000), payment to the LWDA under PAGA (\$75,000), settlement administration costs (estimated at \$20,000), and service awards to the class representatives (requested at \$10,000 each).

1. Proposed Form of Notice to the Class

Within twenty-one (21) days of Preliminary Approval, Defendants will provide the Class List to the Administrator. Within fourteen (14) days of receiving the Class List, the Administrator will mail the Notice to all Class Members. The Notice shall include the number of Qualifying Shifts worked by the Class Member (and their ability to dispute this number), their expected payment, and the claims they will be releasing. The Notice shall inform Class Members of their right to opt out of or object to the Settlement by mailing a written request to the Administrator within forty-five (45) days after the postmark date of the Notice. The Administrator shall make best efforts to notify Class Members, including remailing notices to forwarding addresses and searching online to locate current addresses. (*Id.* Ex. 1, §§ 76-78.)

2. CPT Group, Inc. as Settlement Administrator

CPT Group, Inc. is an experienced and qualified class action claims administrator that has provided class action administration services since 1984. CPT has been appointed as a third-party administrator by all major courts in California and a number of United States District Courts. CPT has estimated their costs to be \$17,250.00. (Howe Dec. ¶ 30)

III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

A class action may not be dismissed, compromised, or settled without the approval of the Court. Fed. R. Civ. P. 23(e). Rule 23(e) sets forth a “two-step process in which the Court first determines

1 whether a proposed class action settlement deserves preliminary approval and then, after notice is
2 given to class members, whether final approval is warranted.” *Nat’l Rural Telecomms. Coop. v.*
3 *DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing Manual for Complex Litigation (Third)
4 § 30.41 (1995)).

5 The law favors settlement, particularly in class actions and other complex cases where
6 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. *See*
7 *4 Newberg* § 11.41, at pp. 87-88 (citing cases); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276
8 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). These concerns
9 apply in this action where the alleged practice affected hundreds or thousands of employees. To make
10 this fairness determination, courts must give “proper deference to the private consensual decision of
11 the parties” since “the court’s intrusion upon what is otherwise a private consensual agreement
12 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned
13 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
14 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
15 concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Indeed, because “a
16 settlement is the offspring of compromise,” the question upon preliminary approval “is not whether
17 the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from
18 collusion.” *Id.*

19 The primary concern of judicial supervision at this stage of the settlement process is to ensure
20 “(1) the proposed settlement appears to be the product of serious, informed, noncollusive
21 negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to
22 class representatives or segments of the class, and (4) falls within the range of possible approval.” *In*
23 *re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (quoting *Schwartz v.*
24 *Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n 12 (E.D. Pa. 2001)); *see also Hanlon*,
25 150 F.3d at 1027; *see 4 Conte & Newberg, Newberg on Class Action* § 11.22 (4th ed. 2002).

26 **A. The Settlement Is the Product of Informed, Non-collusive Negotiations**

27 As discussed above, the proposed settlement was the product of arm’s length, non-collusive
28 negotiations with the assistance of an experienced mediator, following significant motion practice

(including Plaintiffs’ Motion for Class Certification and Defendants’ removal and efforts opposing class certification, including by seeking interlocutory review from the Ninth Circuit via Rule 23(f)), and both formal and informal discovery, including Plaintiff McGhee’s deposition, the deposition of Defendants’ person most qualified, and other relevant information, including extensive payroll data and Defendants’ collective bargaining agreements and meal and rest break policies. (Howe Dec. ¶ 10; *see also Satchell v. Fed. Exp. Corp.*, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (“The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive.”). Plaintiffs and the putative class have been represented by experienced counsel, who demanded the most advantageous terms for the class throughout the litigation. Plaintiffs were well-informed about the strengths and weaknesses of their respective cases after review of the aforementioned discovery and Plaintiffs’ expert conducting a damages analysis based on data produced by Defendants. (Howe Dec. ¶¶11-28.)

B. The Settlement Has No Obvious Deficiencies

The settlement will pay an average payment of approximately \$2,029.54 ($\$4,465,000 \div 2,200 = \$2,029.54$) per employee. This average payment is fair compared to the estimated full relief for Plaintiffs and the class members’ claims when considering Defendants’ defenses and the risks involved. Specifically, the estimated value of the claims, according to a comprehensive analysis, is arguably **\$26,277,333.33**, resulting in a settlement of the exposure with a reduction of approximately 27.4%. (Howe Dec. ¶¶ 11-28.) Plaintiffs estimate that class members will receive approximately \$2.23 ($\$4,465,000 \div 2,000,000 = \2.23) per shift that they worked for Defendants. *Id.*

Plaintiffs’ analysis assumes an estimated class size of 2,200 individuals employed over the course of an estimated 2,000,000 rotating 12-hour shifts at an average hourly rate of pay of approximately \$40 per hour, based on data provided by Defendants. *Id.* In order to avoid any individual inquiries of class members’ exact circumstances, all class members are assumed to have suffered the same sorts of violations at the same rates for the duration of their employment, regardless of when they were employed by Defendants during the Class Period. *Id.* This is reasonable as Plaintiffs allege that class members were all subject to the same policies and procedures that gave rise to the alleged offenses, and that these policies and procedures were largely in place throughout the

1 Class Period. Plaintiffs’ analysis applies large discounts to Plaintiffs’ meal and rest break claims to
2 account for Defendants’ particularly strong defenses and the individual inquiry that would likely be
3 required in order to prove a violation for any individual Qualifying Shift. *Id.* Specifically, Defendants
4 claim that Defendants’ policy of regarding meal periods did not penalize class members who took
5 off-premises meal breaks, but rather, rewarded class members who took on-premises meal breaks. *Id.*
6 Additionally, Defendants claim that not all class members were entitled to off-duty rest breaks due to
7 the safety-sensitive nature of their work. *Id.* Plaintiffs’ analysis also applies a large discount to the
8 Wage Statement and Waiting Time claims due to their derivative nature and the difficulty in proving
9 Plaintiffs’ primary claims. *Id.* Finally, Plaintiffs’ analysis assumes a heavily discounted PAGA
10 penalty due to existing case law that reduces the expected value for the claim. *Id.*

11 Compare this result to *Ma v. Covidian Holding, Inc.*, No. SACV 12-02161-DOC (RNBx),
12 2014 U.S. Dist. LEXIS 13296, at *12 (C.D. Cal. Jan. 31, 2014), in which a settlement providing
13 “9.1% of the total value of the action [was] ‘within the range of reasonableness.’” *Id.* at *5; *see also*
14 *O’Sullivan v. AMN Servs., Inc.*, No. 12-cv-2125-JCS, ECF No. 92 (N.D. Cal. Feb. 7, 2014) (approving
15 gross settlement of \$3 million for 4,246 class members who filed claims (\$478.12 net average
16 payment) where total exposure before penalties and interest was estimated at \$108 million, for a
17 recovery of less than 3% of full relief). In comparison, settlements that have been disapproved are
18 dramatically different from this one. For example, in *Lusby v. Gamestop Inc.*, 297 F.R.D. 400 (N.D.
19 Cal. Mar. 25, 2013), the rejected settlement would have been \$750,000 for 13,872 people – paying a
20 *de minimis* \$0.26/shift, after fees/costs, etc. were deducted.

21 Other than the named Plaintiffs, the class members are releasing only their claims for
22 violations of the Labor Code and Business Professions Code regarding the above alleged violations.
23 *See Hendricks v. Starkist Co.*, No. 13-cv-00729-HSG, 2016 U.S. Dist. LEXIS 134872, at *4, 8, 2016
24 WL 5462423 (N.D. Cal. Sept. 29, 2016) (approving class settlement and scope of the release was
25 limited to “the factual predicate in the operative complaint”). In addition to the total settlement
26 amount, the Parties agreed that the settlement payment be non-reversionary (i.e., maximizing
27 payments to class members and aligning the interests of all parties to a successful settlement
28 administration).

1 **C. The Settlement Does Not Grant Preferential Treatment**

2 The Settlement will treat class members fairly in that it provides payment pro rata based on
3 the number of Qualifying Shifts each Class Member worked for Defendants during the Class Period
4 (i.e., Class Members who worked for Defendants for a longer period of time during the Class Period
5 will receive a larger share of the settlement). (Howe Dec. Ex. 1, § 76.) Thus, assuming that alleged
6 violations of the Labor Code occurred at a consistent rate throughout the Class Period, each Class
7 Member will receive payment that is roughly proportional to the harms they suffered without having
8 to prove any individual harm.

9 The Class Representatives' modest Service Awards of \$10,000 each (\$20,000 total) are
10 justified under the case law and the facts of this case. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938,
11 977 (9th Cir. 2003) (recognizing service awards to named plaintiffs in class actions are permissible
12 and do not render a settlement unfair or unreasonable); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068
13 MMC, 2007 U.S. Dist. LEXIS 8476, at *50-52 (N.D. Cal. Jan. 26, 2007) (approving payments of
14 \$25,000 to each named plaintiff); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D.
15 Cal. 2015) (awarding named plaintiff in wage and hour class action \$10,000 as a service award, and
16 an additional \$5,000 award solely for the general release that the named plaintiff executed as part of
17 the settlement agreement); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995)
18 (awarding \$50,000 to a lead plaintiff). In *Van Vranken*, the court articulated the following relevant
19 factors to assess the appropriateness of a Class Representative's enhancement: 1) the risk to the class
20 representative in commencing suit, both financial and otherwise; 2) the notoriety and personal
21 difficulties encountered by the class representatives; 3) the amount of time and effort spent by the
22 class representatives; 4) the duration of the litigation, and; 5) the personal benefit (or lack thereof)
23 enjoyed by the class representatives as a result of the litigation. *Id.* at 299. These factors support the
24 need for service payments to the class representative.

25 Plaintiffs experienced risk to their reputation and future job prospects as a result of bringing
26 this case and placing themselves in the public record as individuals willing to sue their employer
27 when they believe their rights are violated. (Declaration of Derek L. McGhee ¶ 7; Declaration of
28 Victor Hazlett ¶ 7; *see also Rutti v. Lojack Corp.*, No. SACV 06-350 DOC (JCx), 2012 U.S. Dist.

LEXIS 107677, at *14-15 (C.D. Cal. July 31, 2012) (citing research, noting the “strong disincentives for employees to participate in a class action against their current or former employer”); *Ross v. U.S. Bank Nat. Ass’n*, No. C 07-02951 SI, 2010 U.S. Dist. LEXIS 107857, at *6-7 (N.D. Cal. Sept. 29, 2010) (service awards based on “willingness to serve as representatives despite the potential stigma that might attach to them in the banking industry from taking on those roles”).) Plaintiffs have also estimated they have spent approximately 115 hours in total (70 hours for Derek L. McGhee, 45 hours for Victor Hazlett) on this case including, inter alia, searching for an attorney, communicating with their attorneys, responding to Defendants’ requests for production of documents, submitting to their deposition (McGhee), and reviewing and signing the settlement. (McGhee Dec. ¶ 6; Hazlett Dec. ¶ 6.) The personal benefit Plaintiffs would receive if they were limited to their settlement payments as part of the class would not compensate them for the aforementioned personal costs and risks they have assumed in order to benefit the class. Finally, Plaintiffs are executing a much broader waiver of claims than the other class members, i.e., a general release, which warrants additional compensation. (Howe Dec. Ex. 1, § 44; see *Dent v. ITC Serv. Grp., Inc.*, No. 12-cv-00009-JCM-VCF, 2013 U.S. Dist LEXIS 139363, at *11 (D. Nev. Sept. 27, 2013) (awarding service payment in part because wage-hour plaintiff signed a general release).)

D. The Settlement Falls Within the Range of Possible Approval

The primary inquiry at this stage is whether Plaintiffs’ expected recovery absent settlement balances appropriately against the value of the settlement offer. See *Harris v. Vector Mktg. Corp.*, 2011 WL 1627973, at *9. Courts “preview the factors that ultimately inform final approval:” (1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status; (4) the amount offered in settlement; (5) the extent of discovery completed; (6) the experience and views of counsel; (7) the presence of a government participant (not applicable here); and (8) the reaction of class members. *Id.*

First, while Plaintiffs believe their claims on the merits are strong, Defendants would raise numerous defenses both on the merits of Plaintiffs’ claims and on the grounds that Plaintiffs’ claims cannot be adjudicated on a class-wide basis. For example, Defendants would argue that their policies required “turnover time” tasks to be completed on the clock, and that few (if any) employees donned

1 and doffed personal protective equipment off the clock. Defendants also would argue that Plaintiffs’
2 “discouraged meal break” claims fail as a matter of law, because Defendants’ policies only offered a
3 benefit to employees for taking on-premises meal breaks, which the Ninth Circuit has held is not the
4 same as discouraging off-premises meal breaks. *Rodriguez v. Taco Bell Corp.*, 896 F.3d 952, 954 (9th
5 Cir. 2018). Furthermore, Defendants would move to decertify the classes in *McGhee* and strongly
6 oppose class certification in the *Hazlett* Class Action, as discussed below.

7 *Second*, continued litigation would involve significant risk and expense on both sides. In the
8 *McGhee* Action, the Parties would need to engage in further discovery, including expert discovery,
9 and brief summary judgment. Defendants would also file a motion to decertify the certified classes.
10 Depending on the outcome of Defendants’ motion to decertify and summary judgment motion, the
11 case might proceed to trial. And the Court’s grant of summary judgment and/or any judgment after
12 trial would almost certainly be subject to appeal. In the *Hazlett* Class Action and PAGA Action, the
13 Parties would need to conduct formal written discovery and depositions and litigate class certification
14 (in the *Hazlett* Class Action) and potentially summary judgment. Thus, if the cases are not settled,
15 litigation would almost certainly continue in all of the Actions for several more years, and the benefits
16 class members would receive after such litigation are uncertain.

17 *Third*, there is risk that the certified classes in *McGhee* would not remain certified for the
18 duration of the litigation. This Court granted Plaintiff’s motion for class certification on the grounds
19 that Plaintiff “allege[d] that common questions predominate” and that “all [class] members allegedly
20 suffered the same or similar injury.” Dkt. 116 at 4-5. If the litigation were to proceed, however,
21 Defendants would move to decertify the classes on the grounds that the evidence does not actually
22 support Plaintiff’s Rule 23 allegations, and instead shows that Plaintiff’s claims depend on
23 individualized inquiries. For example, Defendants would argue that the evidence shows there was no
24 common policy or practice requiring class members to complete “turnover time” tasks off the clock
25 or of discouraging them from taking off-premises meal breaks. In the *Hazlett* Class Action, a class
26 has not yet been certified, and Defendants would vigorously oppose class certification on the grounds
27 that the claims in that case, including Plaintiff’s donning and doffing claims, cannot be proven through
28 class-wide evidence.

1 *Fourth*, as discussed above, the amount offered under the proposed settlement provides a fair
2 average per person net recovery for a wage-and-hour class action. As discussed above, each Class
3 Member is estimated to receive an average payment of \$2,029.54, far above what Courts have
4 approved in other large settlements. Further, Class Members will not have to prove any individualized
5 harms they may have suffered in order to receive payment.

6 *Fifth*, the Parties have engaged in formal and informal discovery, including exchanging all
7 information and documents necessary to assess the value of each class member's claims, such as
8 Defendants' policies and class members' time records and wage statements.

9 *Sixth*, the firms representing Plaintiffs are experienced in wage and hour class actions, having
10 had wage and hour settlements approved repeatedly by federal and state courts in California. (*See*
11 *Howe* Dec. ¶¶ 44-49 (detailing counsels' experience)). In the view of undersigned counsel, this
12 Settlement is in the best interests of the Class in light of the risk and delay of a class action trial and
13 appeal, as compared with the immediate and substantial recovery in the Settlement.

14 *Seventh*, there is no governmental entity involved.

15 *Eighth*, the reaction of the class members to the settlement will be better gauged at the final
16 fairness hearing and the close of the opt out deadline.

17 **IV. PLAINTIFFS' CLAIMS MERIT CLASS ACTION TREATMENT**

18 Class certification under Rule 23 requires a plaintiff to demonstrate the four requirements of
19 Rule 23(a) are met: numerosity, commonality, typicality, and adequacy. The plaintiff must also
20 establish that one of the bases for certification in Rule 23(b) is met. Here, the *McGhee* Action was
21 previously certified for litigation purposes under Rule 23(b)(3), which requires that plaintiff show
22 questions of law or fact common to class members predominate over questions affecting individual
23 class members and that the class action is superior to other available methods. Dkt. 116. Plaintiff need
24 only make a "prima facie showing" of the requirements under Rule 23. *Busby v. JRHBW Realty, Inc.*,
25 513 F.3d 1314, 1322 (11th Cir. 2008); *see* Schwarzer, Tashima & Wagstaffe, Cal. Prac. Guide: Fed.
26 Civ. Pro. Before Trial § 10:571 (The Rutter Group 2012). In determining the propriety of class
27 certification, a court may not delve into the underlying merits of the claims. The fundamental question
28 "is not whether . . . plaintiffs have stated a cause of action or will prevail on the merits, but rather

whether the requirements of Rule 23 are met.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). Accordingly, when ruling on the propriety of class certification, a district court “is bound to take the substantive allegations of the complaint as true.” *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975). A court “may not require plaintiffs to make a preliminary proof of their claim; it requires only sufficient information to form a reasonable judgment.” *Baldwin & Flynn v. Nat’l Safety Associates*, 149 F.R.D. 598, 600 (N.D. Cal. 1993). Under these governing standards, this action meets the requirements for certification under Rule 23(a) and Rule 23(b)(3).

A. Numerosity Under Rule 23(a)

Under Rule 23(a)(1), a class action may be maintained where “the class is so numerous that joinder of all members is impracticable.” Numerosity is satisfied here because the proposed settlement class includes at least 2,200 potential members. *See Ries v. Ariz. Beverages USA LLC*, 287 F.R.D. 523, 536 (N.D. Cal. 2012) (“While there is no fixed number that satisfies the numerosity requirement, as a general matter, a class greater than forty often satisfies the requirement, while one less than twenty-one does not.”).

B. Commonality Under Rule 23(a)

A Rule 23 class is certifiable only if “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This commonality requirement must be “construed permissively.” *Hanlon*, 150 F.3d at 1019. Plaintiff need not demonstrate that all questions of fact and law are common. “The existence of shared legal issues with divergent factual predicates is sufficient.” *Id.* Where a class is united by a common interest in determining whether a defendant’s broad course of conduct is actionable, commonality is not defeated “by slight differences in class members’ positions.” *Blackie*, 524 F.2d at 902.

Here, all class members share several common legal questions, including (1) whether Defendants maintained a policy or practice of failing to provide employees with their meal and rest breaks and premium wages for missed meal and rest breaks; (2) whether Defendants failed to pay wages for all time worked at the minimum wage; (3) whether Defendants failed to timely pay wages due at the time of termination; (4) whether Defendants failed to provide accurate wage statements; and (5) whether class members are entitled to restitution of money or property that Defendants may

1 have acquired from them through unfair competition. Any factual variations among class members
2 have no bearing on these common legal questions. All class members share the common interest of
3 determining the answer to these common legal questions.

4 **C. Typicality Under Rule 23(a)**

5 Rule 23(a)(3) requires the representative plaintiff have claims “typical of the claims . . . of the
6 class.” Representative claims are typical “if they are reasonably co-extensive with those of absent
7 class members; they need not be identical.” *Hanlon*, 150 F.3d at 120. The named plaintiff need not
8 be “identically situated” with all other class members. *Cal. Rural Legal Assistance, Inc. v. Legal*
9 *Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990). Typicality refers to the “nature of the claim . . . of
10 the class representative, and not to the specific facts from which it arose.” *Hanon v. Dataproducts*
11 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The test of typicality is thus “whether other members have
12 the same or similar injury, whether the action is based on conduct which is not unique to the named
13 plaintiffs, and whether other class members have been injured by the same course of conduct.” *Id.*

14 Here, Plaintiffs, like all other class members, were unionized hourly non-exempt employees,
15 employed in California during the class period who were subject to the same policies and procedures
16 in question in the pending actions. All class members and Plaintiffs seek the same relief under the
17 Labor Code and Business Professions Code. This lawsuit is based on alleged conduct that is not
18 unique to Plaintiffs, but rather that is common to all class members.

19 **D. Adequate Representation Under Rule 23(a)**

20 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the
21 interests of the class.” Adequate representation turns on whether the named plaintiff and his counsel
22 “have any conflicts of interest with other class members,” and whether the named plaintiff and his
23 counsel will “prosecute the action vigorously on behalf of the class.” *Hanlon*, 150 F.3d at 1020.

24 Here, Plaintiffs were allegedly injured by the same course of conduct shared by the class
25 members and do not have a conflict of interest with other class members. Plaintiffs’ counsel has
26 substantial class action experience and can adequately represent the class. *See Local Joint Exec. Bd.*
27 *of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)
28 (adequacy established by fact that counsel were experienced practitioners). (Howe Dec. ¶¶44-49.)

1 **E. Rule 23(b)(3) Factors**

2 Rule 23(b)(3) requires establishing (1) the predominance of common questions of law or fact,
3 and (2) the superiority of a class action relative to other available methods for the fair and efficient
4 adjudication of the controversy.

5 The predominance inquiry focuses on whether the class is “sufficiently cohesive to warrant
6 adjudication by representation.” *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d
7 1152, 1162 (9th Cir. 2001). Central to predominance is “the notion that the adjudication of common
8 issues will help achieve judicial economy.” *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1188,
9 1189 (9th Cir. 2001). As discussed above, Plaintiffs contend Defendants had policies or practices
10 inconsistent with state law. Considerations of judicial economy obviously favor litigating these
11 common issues once in a class action instead of hundreds of times in separate lawsuits. “When
12 common questions present a significant aspect of the case and they can be resolved for all members
13 of the class in a single adjudication, there is clear justification for handling the dispute on a
14 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

15 To determine whether the superiority requirements of Rule 23(b)(3) are satisfied, a court must
16 compare a class action with alternative methods for adjudicating the parties’ claims. Lack of a viable
17 alternative to a class action necessarily means that a class action satisfies the superiority requirement.
18 *Culinary/Bartenders Trust Fund*, 244 F.3d at 1163; *see also Valentino v. Carter-Wallace*, 97 F.3d
19 1227, 1235-36 (9th Cir. 1996) (“a class action is a superior method for managing litigation if no
20 realistic alternative exists”). This case involves multiple claims for relatively small sums and a class
21 action clearly serves as the only method that would ““permit the plaintiffs to pool claims which would
22 be uneconomical to litigate individually.”” *Culinary/Bartenders Trust Fun*, 244 F.3d at 1163 (quoting
23 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985)).

24 Rule 23(b)(3) lists four factors pertinent to the above findings: (A) interest of members of the
25 class in individually controlling the prosecution/defense of separate actions; (B) extent and nature of
26 litigation already commenced by or against members of the class; (C) desirability/undesirability of
27 concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be
28 encountered in the management of a class action. However, when a court reviews a class action

1 settlement, the fourth factor does not apply. *Amchem Products Inc. v. Woodward*, 521 U.S. 591, 620
2 (1997). Here, Plaintiffs assert that the remaining factors all favor class certification.

3 First, any class member who wants to pursue an individual action and seek compensation in
4 excess of their estimated settlement payment can opt out of the Settlement. Class Members are being
5 informed of their estimated settlement payment and estimated number of Qualifying Shifts which
6 they can dispute or choose to opt out of the Settlement after reviewing the Qualifying Shifts.

7 Second, there will be no competing litigation regarding the statutory violations at issue as the
8 Parties are unaware of any pending related actions aside from the actions being consolidated here for
9 settlement.

10 Finally, it is desirable to concentrate the issues in this forum because the parties reside in
11 California and the class is comprised of employees who worked for Defendants in California.

12 **V. CONCLUSION**

13 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair
14 and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of
15 informed, extensive, and arms' length negotiations conducted by counsel for respective parties who
16 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties
17 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the
18 proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a
19 final approval hearing.

20
21 Dated: April 7, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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