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on behalf of himself and all others similarly situated and aggrieved

Additional Counsel Listed on Next Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES- SPRING STREET COURTHOUSE

MARIO ANGEL MENDOZA, an individual and on behalf of himself and all others similarly situated; EDIN MARROQUIN, an individual, on behalf of himself and all others similarly situated, and on behalf of the State of California and other aggrieved persons,

Plaintiffs,

v.

AMUSEMENT INDUSTRY, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV09790

[Assigned to the Hon. Carolyn B. Kuhl, in Dept. 12]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF DAVID D. BIBIYAN, VEDANG J. PATEL, JUSTIN MARQUEZ, AND SEAN HARTRANFT IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: October 12, 2022
TIME: 10:00 a.m.
DEPT: 12

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Attorneys for Plaintiff, EDIN MARROQUIN,
on behalf of himself and all others similarly situated and aggrieved

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 12, 2022 at 10:00 a.m., or as soon thereafter as they may be heard in Department 12 of the Superior Court of the State of California for the County of Los Angeles, plaintiffs Mario Angel Mendoza ("Plaintiff Mendoza") and Edin Marroquin ("Plaintiff Marroquin" and with Plaintiff Mendoza, "Plaintiffs") on behalf of themselves and all others similarly situated and aggrieved, will and hereby do move for this Court for entry of an Order:

1. Preliminarily certifying the following two (2) settlement classes for the purpose of settlement only:

    a. All current and former non-exempt, hourly-paid employees who worked in for defendant Amusement Industry, Inc. doing business as Westland Real Estate Group ("Defendant") at any time during the period between March 12, 2017 through February 10, 2022 ("Class Period") in California ("Class Members").

    b. All Participating Class Members[1] who performed technician duties including, but not limited to performing maintenance and repair, plumbing, electrical, carpentry, painting, cleaning, and responding to emergency maintenance requests, and worked for Defendant in California at any time during the Class Period ("Technician Class Members").

2. Preliminarily approving the representative Plaintiffs as Class Representatives;

3. Preliminary approving David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C., as well as Justin F. Marquez of Wilshire Law Firm, as Class Counsel;

4. Preliminarily approving the settlement claims under the terms set forth in the Joint Stipulation re: Class Action and Representative Action Settlement ("Settlement Agreement");[2]

5. Preliminarily approving payment of the Gross Settlement Amount of $1,118,580.00, which

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[1] "Participating Class Members" means all Class Members and Technician Class Members who do not submit a timely and valid Request for Exclusion.

[2] A true and correct copy of the Settlement Agreement is attached with its exhibit(s) as Exhibit 1 to the Declaration of Vedang J. Patel ("Patel Decl.") for the Court's convenience.

is subject to escalation pursuant to the Settlement Agreement.

6. Preliminarily approving the Technician Settlement Amount of $100,000.00 to be distributed to Technician Class Members from the Gross Settlement Amount;

7. Approving the form and content of the Class Notice submitted herewith;

8. Appointing ILYM Group, Inc. ("ILYM") to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement;

9. Preliminarily approving the payment of $11,275.00 for settlement administration to ILYM from the Gross Settlement Amount;

10. Preliminarily approving an enhancement award of $7,500.00 each to Plaintiff Mendoza and Plaintiff Marroquin, for a total of $15,000.00 to Plaintiffs, in consideration for Plaintiffs' extensive efforts in prosecuting this case;

11. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the amount of thirty-five (35%) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $391,503.00.

12. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $30,000.00.

13. Preliminarily approving PAGA penalties in the amount of $50,000.00, seventy-five percent (75%), or $37,500.00, of which will be paid to the Labor and Workforce Development Agency out of the Gross Settlement Amount, and twenty-five percent (25%), or $12,500.00, of which will be distributed to Aggrieved Employees, defined as Class Members working for Defendant during the period between April 12, 2020 through February 10, 2022 ("PAGA Period") as non-exempt, hourly-paid employees in California.; and

14. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for the granting this Motion in that the proposed settlement is fair, reasonable and adequate.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of David D. Bibiyan, Vedang J. Patel, and Justin F.

Marquez, exhibits attached thereto, argument of counsel and upon such other material contained in the file and pleadings of this action.

Dated: September 1, 2022

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
Attorneys for Plaintiffs on behalf of themselves and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Mario Angel Mendoza ("Plaintiff Mendoza") and Edin Marroquin ("Plaintiff Marroquin" and with Plaintiff Mendoza, "Plaintiffs") on behalf of themselves and all others similarly situated and aggrieved, hereby apply for preliminary approval of the proposed Joint Stipulation re: Class Action and Representative Action Settlement ("Settlement Agreement" or "Settlement") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Vedang J. Patel as Exhibit "1".

On March 12, 2021, Plaintiff Mendoza filed this putative wage-and-hour class action in the alleging that defendant Amusement Industry, Inc. doing business as Westland Real Estate Group ("Defendant"): (1) failed to pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to provide rest periods, or compensation in lieu thereof; (5) failed to timely pay all wages due upon separation from employment; (6) failed to provide accurate wage statements; (7) failed to reimburse employees for business expenses; (8) engaged in unfair competition; and (9) violated Labor Code Section 227.3 (the "Mendoza Action").

On April 9, 2021, Plaintiff Marroquin filed a separate putative wage-and-hour class action against Defendant, bringing substantially similar allegations as Plaintiff Mendoza in his class action (the "Marroquin Class Action").

On April 12, 2021, Plaintiff Marroquin filed with the Labor and Workforce Development Agency ("LWDA") and served on Defendant, a notice under Labor Code section 2699.3 stating he intended to serve as a proxy of the LWDA to recover civil penalties on behalf of himself and other non-exempt, hourly-paid employees of Defendant under the Labor Code Private Attorneys' General Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), for various Labor Code violations ("Marroquin PAGA Notice"). A true and correct copy of the PAGA Notice is attached to the Declaration of Justin F. Marquez as Exhibit "2".

After sixty-five (65) days had passed without any action by the LWDA with respect to the Labor Code violations alleged in the Marroquin PAGA Notice, Plaintiff Marroquin amended his complaint in the Marroquin Action to seek civil penalties against Defendant under PAGA for the Labor Code violations in the Marroquin PAGA Notice.

Thereafter, Plaintiffs and Defendant (collectively, the "Parties") agreed to exchange informal discovery and attend an early mediation. Prior to mediation, Plaintiffs were provided with, among other things: (1) a 20% sampling of time and payroll records for the estimated 459 putative class members; (2) data points for the putative class which included hire dates, termination dates, and average rates of pay; (3) all employment policies and procedures in Defendant's possession, custody, or control; and (4) all documents pertaining to Plaintiffs in Defendant's possession, custody, or control.

On February 10, 2022, the Parties participated in a full-day mediation before Mark S. Rudy Esquire, a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties reached the Settlement to resolve the Action and the claims asserted in the Marroquin PAGA Notice. As part and parcel to the Settlement, the Parties agreed to file a First Amended Complaint in the Mendoza Action (hereinafter, the "Action" or "Litigation" or "Lawsuit") in order to effectively consolidate the Mendoza Action and Marroquin Action, including Plaintiff Marroquin's PAGA cause of action. The Stipulation to file the First Amended Complaint and First Amended Complaint are filed concurrently with this motion.

The Parties had strong positions at mediation regarding the certifiability of Plaintiffs' claims, the merits thereof, the manageability of a trial, and the likelihood of recovering civil penalties for aggrieved employees. Nevertheless, the Parties concluded, after considering the sharply disputed factual and legal issues involved in this Litigation, the risks associated with further prosecution, and the substantial benefits to be received pursuant to the compromise and settlement of the Lawsuit as set forth in the Settlement Agreement, that settlement on the terms set forth herein is in the best interest of Plaintiffs, putative class members, aggrieved employees, and Defendant, and is fair, reasonable, and adequate.

II. <u>THE SETTLEMENT</u>

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California

Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto. A summary of the terms of the settlement are as follows:

Defendant will stipulate, for purpose of this settlement only, as follows:

- Certification of two (2) classes defined as:
  1. All current and former non-exempt, hourly-paid employees who worked in for defendant Amusement Industry, Inc. doing business as Westland Real Estate Group ("Defendant") at any time during the period between March 12, 2017 through February 10, 2022 ("Class Period") in California ("Class Members").
  2. All Participating Class Members[3] who performed technician duties including, but not limited to performing maintenance and repair, plumbing, electrical, carpentry, painting, cleaning, and responding to emergency maintenance requests, and worked for Defendant in California at any time during the Class Period ("Technician Class Members").
- Defendant will pay $1,118,580.00[4] (*i.e.,* the "Gross Settlement Amount" or "GSA") to resolve the matter.
- $100,000 of the Gross Settlement Amount shall be allocated towards payment to Technician Class Members.
- Defendant will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.

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[3] "Participating Class Members" means all Class Members and Technician Class Members who do not submit a timely and valid Request for Exclusion.

[4] The Settlement is based on Defendant's that there are no more than 37,296 Workweeks worked during the Class Period. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 3,729 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 37,296 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount ($1,118,580.00) by 37,296, which amounts to a Workweek Value of $30.00 per Workweek. Thus, for example, should there be 42,000.00 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by $141,12.00. ((42,000 Workweeks – 37,296 Workweeks) x $30.00 per Workweek.).

- Class Members and Technician Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks[5] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $11,275.00, will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C., as well as Justin F. Marquez of Wilshire Law Firm, will apply for, and Defendant will not oppose, attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to the Settlement Agreement, amounts to $391,503.00, and actual costs, not to exceed $30,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel will apply for, and Defendant will not oppose, an enhancement award of $7,500.00 each for the Class Representatives, for a total of $15,000.00, which will be paid out of the Gross Settlement Amount.
- The "PAGA Period" means the period from April 12, 2020 through February 10, 2022.
- "Aggrieved Employees" means Class Members working for Defendant during the PAGA Period as non-exempt, hourly-paid employees.
- Defendant has agreed to pay $50,000.00 as PAGA penalties, seventy-five percent (75%) or $37,500.00 of which will be paid to the LWDA out of the Gross Settlement Amount, and twenty-five percent (25%) or $12,500.00 of which will be distributed to Aggrieved Employees.
- Any checks from this distribution that are not cashed by Participating Class Members within one-hundred-eighty (180) calendar days from the date of their issuance shall be canceled and funds associated with such checks shall be considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid

[5] "Workweek" means the number of workweeks that a Settlement Class Member was employed by and worked for the Defendant in a non-exempt, hourly position in California during the Class Period, based on hire dates, re-hire dates, and termination dates, and worked at least one shift during each such workweek..

Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street, Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles County.

III. <u>THE TWO-STEP APPROVAL PROCESS</u>

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation Second states at section 30.44:

> A two-step process is followed when considering class settlements … if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representative or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

(*Id.* at § 10 (1985).)

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of the acceptable settlements. As class action Professor Herbert B. Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing." (4 Conte & Newberg, Newberg on Class Actions ["Newberg on Class Actions"], § 11.26 (4th Ed. 2002).)

The procedures for submission of a proposed settlement for preliminary approval is discussed at section 11.24 through 11.26 of Newberg on Class Actions. Newberg observes at section 11.24:

> When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of the settlement, form of payment, manner of determining the effective date of settlement, and any

recapture clause.

The Settlement Agreement in this case is fair, reasonable, and in the best interest of Class Members.

IV. THE PRESUMPTION OF FAIRNESS

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.) Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087, 1093, citing Newberg on Class Actions, § 11.44, p. 457 and *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F.Supp. 471; *In re Ikon Office Solutions, Inc. Securities Litigation* (E.D. Pa. 2002) 209 F.R.D. 94, 104, citing *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (E.D. Pa. 1978) 79 F.R.D. 571, 576.)

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and have obtained substantial data from the opposing party. (*See* Newberg on Class Actions, § 11.47.)

In this Litigation, the Settlement was reached after discussions between Class Counsel, extensive factual and legal research, informal discovery, an exchange of data points, time and payroll records, a review and analysis of time and payroll records with Plaintiffs and expert consultants, preparation of damages analyses with the aid of expert consultants, and a full-day mediation session with a mediator experienced in mediating complex labor and employment matters. The Settlement that has been reached, subject to this Court's approval, is the product of substantial effort and expense by the Parties and their counsel. The settlement amount is, of course, a compromise figure. However, counsel for the Parties are satisfied that this figure is reasonable in light of the risks and expense of continued litigation.

V. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A notice of settlement of a class action "must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769, subd. (f).)

Attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Notice of Class Action Settlement ("Class Notice") to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc. ("ILYM"), an experienced Settlement Administrator, to administer the settlement. The Parties have further agreed that the administration costs will be paid out of the Gross Settlement Amount. It is requested that the Court appoint ILYM to serve as the Settlement Administrator.

VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Settlement Was Negotiated at Arms-Length and Is Not Collusive

The Settlement that has been reached, subject to this Court's approval, is the product of substantial effort by the Parties and their counsel. The Settlement was reached after extensive factual and legal investigation and research; substantial negotiation regarding the scope of informal discovery; an exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiffs and expert consultants; an analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time penalties; analysis of Plaintiff's employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day session of mediation, followed by months of further negotiations to finalize the terms and conditions of the general settlement parameters agreed to by the Parties. The settlement amount is a compromise figure. It considered the risks related to certifiability, liability, and manageability.

Plaintiffs assert that the wage and hour claims and the claims for resulting penalties would be certified. On the other hand, Class Counsel understand from the mediator and the mediation process that Defendant argued that Plaintiffs cannot meet the requirements of class certification because any wage discrepancies are not the product of an overarching policy that was uniformly applied; that Class Members were paid for all hours under Defendant's control, or otherwise suffered or permitted to work by Defendant; that it properly calculated the regular rate of pay for the purpose of calculating overtime wages; that meal periods were provided and rest periods were authorized and/or permitted; that Defendant's meal and rest period policies were compliant; that Defendant did not deter Class Members from taking meal and rest periods and any untimely or missed meal periods were elections by Class Members and not caused by Defendant or Class Members were paid the required premiums; that Defendant reimbursed Class members for all expenses incurred in furtherance of work; and that Defendant thus provided all pay owed to Class Members by separation of employment and issued accurate wage statements to Class Members. Defendant further contends that class certification would not be warranted because individual liability issues predominate over any class-wide allegations.

While Plaintiffs believe in their chance of success of certifying the claims, Plaintiffs recognized the potential risk, expense, and complexity posed by further litigation. Moreover, litigating Plaintiffs' claims in this Litigation—claims that involve approximately 459 Class Members during the Class Period—would require substantial preparation and discovery and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation, and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

In light of the sharply contested legal and factual issues, the risks of continued litigation, and the substantial benefits to Class Members under the Settlement, the terms and conditions of this class settlement are fair and reasonable to all sides.

B. The Settlement Amount is Well Within Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees, and easily falls within the range of reasonableness.

1. Unpaid Wages for Failure to Pay for All Time Worked

Class Counsel advanced theories at mediation that Defendant failed to pay all wages owed to Class Members because: (1) Class Members were required to perform pre-shift and post-shift duties; (2) Class Members were expected to remain on-call every other week and respond immediately to work requests; and (3) Defendant detrimentally rounded Class Members' time entries. Based on Plaintiffs' narrative evidence, Class Counsel theorized Class Members were expected to perform tasks off-the-clock such as creating reports for the next shift, attending to customer complaints, performing tasks related to plumbing or other property issues, and attending to emergency requests. Furthermore, based on Plaintiffs' narrative evidence, Class Counsel theorized Class Members were under Defendant's control during weeks in which they were on-call for which their time went uncompensated. Finally, Class Counsel understand from the mediation process that Defendant rounded time entries to the nearest quarter hour, and thus Class Counsel theorized at mediation Class Members were detrimentally harmed by Defendant's rounding practices.

Class Counsel advanced several theories at mediation, one of which was that Class Members worked approximately fifteen (15) minutes off the clock without pay based on the foregoing theories. Furthermore, Class Counsel understand from expert consultants retained to analyzed Defendant's records that approximately 47.9% of all shifts were greater than eight (8) hours in length. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure in unpaid wages for off-the-clock work to be $1,521,251. ((182,782 x .479 shifts x $18.91/hour x .25 hours/shift x 1.5 overtime rate) + (182,782 shifts x .521 shifts x $18.91 x .25 hours/shift x 2 in liquidated damages)).

Additionally, Class Counsel understand rom expert consultants retained to analyze

Defendant's records that Defendant rounded 70.4% of all Class Members time entries during the shift, for an average of one minute every single shift, or 2,075.7 hours. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure in unpaid wages for detrimental rounding to be $67,531. (2,075.7 hours x .479 shifts x 1.5 overtime rate) + (2,075.7 hours x .521 shifts x 2 in liquidated damages).

Thus, one calculation performed at mediation by Class Counsel resulted in **Defendant's exposure for failure to pay for all time worked for the foregoing theories to be $1,588,782**.

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that they did not require Class Members to work off-the-clock and, rather, they were paid for all time suffered or permitted to work. Defendant contends that its policies prohibit off-the-clock work. Defendant argued that rounded time entries benefitted Class Members. Defendant also contends that any theory that off-the-clock work was performed is purely speculative, such off-the-clock work was voluntary if it occurred, and certainly not indicative of a pattern or practice. For the same reason, Defendant contends this claim not subject to class treatment and would make a trial in this Litigation unmanageable. Defendant further states that an estimate of 15 minutes of time worked off-the-clock for every single shift during the Class Period is an exaggeration of time spent working off-the-clock, even if any was spent.

Class Counsel had to, and did, factor in the defenses attributed to Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

2. Failure to Include Incentive Pay in the Regular Rate of Pay for Calculating Overtime Wages

Class Counsel theorized at mediation that Defendant failure to properly include incentive bonuses to Class Members in the regular rate of pay for purposes of calculating overtime wages. Class Counsel understand from Defendant's policies that some Class Members would qualify for incentive bonuses for high productivity and completing large projects. Based on expert analysis, Class Counsel understand 6.8% of pay periods included incentive bonuses, which when factoring in resulted in average underpayment of $18.48 per pay period. Based on expert analysis, Class Counsel understand this resulted in **$4,011 in unpaid overtime wages**.

Class Counsel understand from the mediator and the mediation process that Defendants made the following defenses in connection with this claim: Defendant contends that any bonuses paid were discretionary and thus are not to be included in the regular rate of pay for the purposes of calculating overtime wages under the applicable Wage Order. Defendant further defends that it did properly include all bonuses under the applicable Wage Order in Class members' regular rate of pay for calculating overtime wages and thus no monies are owed in connection with this theory.

Once again, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

3. <u>Recovery of Damages for Non-Compliant Meal Periods</u>

Class Counsel theorized that Defendant's meal period policies and practices throughout the Class Period did not comply with the Labor Code. Class Counsel, based on Defendant's records, theorized that Defendant's meal period policy was non-compliant in that it require supervisors authority over when Class Members could take meal periods and did not inform Class Members when meal period premiums are to be paid. Furthermore, expert analysis of Defendants' records showed that meal periods were rounded to the nearest half hour.

Moreover, the documents provided to Class Counsel showed that 68,052 eligible shifts had unique meal period violations *(i.e.,* meal periods that were late, short, or not taken). Furthermore, documents and information reflected that no meal period premiums provided. Thus, one measure of exposure Class Counsel advanced at mediation **for non-compliant meal periods came to $1,286,863**. (68,052 eligible shifts x $18.91/hour.).

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that it had compliant meal period policies and practices. Defendant argued that Class Members took timely and full meal-periods and any rounded entries were coincidental and do not in any fashion dictate a Labor Code violation or indicate harm to Class Members. Defendant contends that its policy requires their employees to take timely and full meal periods. Defendant further contends that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry, and would not lend itself to a manageable trial. Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

Once again, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

4. <u>Recovery of Damages for Non-Compliant Rest Periods</u>

Class Counsel theorized that Defendant's rest period policies and practices were non-compliant in that Class Members were not informed they are entitled rest period premiums or when they may be entitled to them, and did not consistently receive timely, uninterrupted rest periods evidenced by Plaintiff's narrative evidence. Notably, a review of payroll records provided by Defendant reflects that no rest period premiums were ever issued during the Class Period.

An analysis of the time records, payroll records, and data provided by Defendant reflects approximately 170,925 shifts worked above 3.5 hours for Class Members. Thus, one calculation performed at the mediation was a 40% violation rate of rest-eligible shifts, resulting in an exposure of **$1,292,878 for failure to pay rest period premiums**. (170,925 shifts x $18.91/hr x .4 shifts).

Class Counsel understand from the mediator and the mediation process that Defendant make the following defenses in connection with this claim: Defendant argued that it maintained a compliant rest period policy and practice and that, in fact, all Class Members were authorized and permitted to take rest periods and did. Defendant further contends that if Class Members did not take the rest periods they were authorized and permitted to take, they did so voluntarily and thus the same would raise an individualized inquiry that would neither be suited for certification nor manageable at trial. Lastly, Defendant contends that a 40% violation rate for rest period violations is excessive, speculative, and unwarranted and that, instead, there are no monies owed for unpaid rest periods.

While Class Counsel believes that rest periods were often not taken or interrupted by Defendant, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

5. **Failure to Indemnify Business Expenses**

Class Counsel theorized that Class Members are owed money for Defendant's failure to reimburse for: (1) purchase and maintenance of their own tools and equipment; (2) separate laundering of work uniforms; (3) use of a personal cell phone for work purposes; and (4) unpaid mileage reimbursements.

A. Purchase and Maintenance of Tools and Equipment

Class Counsel theorized, based on Plaintiffs' narrative evidence, that Technician Class Members were required to personally purchase tools for work purposes and maintain them. Furthermore, Defendant's own policy indicated that technicians must have their own tools for work. One theory advanced at mediation by Class Counsel was a conservative $1,000 in purchase of tools and equipment for Technician Class Members. Class Counsel understand from the documents provided that there are approximately 201 Technician Class Members during the Class Period. Thus, one calculation performed by Class Counsel at mediation resulted in Defendant's exposure for this claim to be $201,000 (201 Technician Class Members x $1,000).

B. Separate Laundering of Work Uniforms

Class Counsel also theorized that Technician Class Members mandatory work uniforms would become soiled, requiring separate laundering, due to the nature of their work. Class Counsel theorized their uniforms would become soiled due to working with hazardous chemicals as well as exposure to fecal bacteria from duties that included picking up after dog remains, repairing toilets, and repairing sewer lines. Class Counsel understand from expert analysis that there are approximately 23,225 Workweeks worked by Technician Class Members. Thus one calculation performed at mediation by class counsel resulted in Defendant's exposure for this claim to be $232,250 ($10 per laundry wash x 22,225 Workweeks).

C. Use of a Personal Cell Phone for Work Purposes

Class Counsel theorized that Class Members are owed reimbursement for personal cell phone usage because Defendant's policy required some employees to maintain a smart phone with a working camera and have sufficient internet and wireless cellular data plans. Class Counsel understand from Defendant's policies that it reimbursed Class Members at a rate of $5.00 per month for such usage. However, Class Counsel theorized that cell phones cost more than $5.00 per month. One theory advanced at mediation was a cost of $60 per month for each phone, which after subtracting the $5.00, results in $55.00 per month, or $650 per employee per year. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure for this claim to be $596,700 (459 Class members x $1,300 (average of 2 years of work per employee)).

D. Unpaid Mileage Reimbursement

Class Counsel theorized, based on Plaintiffs' narrative evidence, that Technician Class Members were required to use their own vehicles to drive to and from various properties after they reported for work. Class Counsel theorized at mediation that Technician Class Members would be required to drive up to five (5) miles of unpaid mileage per shift, or 125 miles per week. Thus, one calculation performed at mediation by Class Counsel resulted in Defendant's exposure for this claim to be $235,240 (80,424 shifts worked by Technician Class Members (80,424 shifts worked by Technician Class Members x 5 miles x $0.585/mile).

Thus, one calculation performed by Class Counsel at mediation resulted in **Defendant's exposure for failure to reimburse for business expenses to be $1,265,190.**

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant argued that it reimbursed Class Members for all expenses incurred and pointed to its own policies which expressly reimburse employees for certain expenses. Defendant argued that Technician Class Members already owned the tools necessary to perform their work and no additional monies are owed for that claim. Defendant contends that Technician Class Members did not separately launder their uniform in practice. Defendant also contends that it expressly reimbursed Class Members for cell phone usage for work purposes and that Class Members used their cell phones for other purposes than work, and as such is not liable for the entirety of their cell phone bills. Furthermore, Defendant contends that Class Members were reimbursed for their mileage. Finally, Defendant contends that any instance of a Class Member claiming to be owed reimbursement would require an individualized inquiry into when and why, and therefore not make this claim subject to class treatment. Thus, Defendant contends that no monies are owed for these claims, either.

Once again, Class Counsel had to, and did, factor in Defendant's defenses, when considering whether the settlement reached was fair, reasonable and adequate.

6. **Penalties for Wage Statement Violations**

Class Counsel theorized that Class Members are entitled to recover penalties for Defendant's alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e) for the derivative impact of the failure to pay all wages owed on providing accurate information on wage statements. Specifically, Class Counsel theorized that penalties are owed under Labor Code section 226 due to, at minimum, Defendant's: (1) failure to pay wages for all hours worked; and (2) failure to pay premium wages. A non-exempt employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226, subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period.

The data provided by Defendant reflects that there were 9,687 pay periods during the relevant statutory period for Class Members. If, in fact, Class Members worked every off-the-clock every shift as set forth above, and no meal period or rest premiums were paid, every wage statement would thus, Class Counsel theorized, violate Labor Code section 226. Thus, **Defendant's maximum exposure for wage statement violations would be $986,700**. (9,867 pay periods x $100/pay period.)

Class Counsel understand from the mediator and the mediation process that Defendant makes the following defenses in connection with this claim: Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226. Defendant contends that because it believes no wages are unpaid that, thus, there can be no derivative penalties.

Defendant further defends that even if there were, *arguendo*, derivative penalties, that Plaintiffs suffered no injury, citing *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308 [*Maldonado*]. In that case, the Court noted that "inaccurate wage statements alone do not justify penalties; the plaintiffs must establish injury flowing from the inaccuracy." The Court therein rejected the position of plaintiffs in that matter that "*any* failure to pay overtime at the appropriate rate *also* generates a wage statement injury justifying the imposition of wage statements…" At the time of mediation, Defendant further cited *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444 [*Naranjo*] for the proposition that no derivative wage statement violation exists for failure to pay for meal and rest period premiums.

Defendant once again defended that no unpaid wages are owed as Defendant did not fail to pay for all hours worked. Defendant also points out that Class Counsel's calculation neither takes into account that the first pay period merits only a $50 instead of a $100 violation rate. At the time of mediation, Defendant further defended that no waiting time penalties are owed for unpaid premium under *Naranjo*.

Class Counsel note that California Supreme Court recently overruled the California Court of Appeal's decision in *Naranjo* and ruled that employer can be liable for derivative wage statement violations for failure to pay meal and rest period premiums. (*See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93, [509, P.3d 956, 969].) Class Counsel further notes that, to the extent *Maldonado* is still good law after the Court's ruling in *Naranjo*, the Court in *Maldonado* suggests that failure to account for all time worked may, in fact, constitute an injury, and thus does not find the defense meritorious as to Class Counsel's argument.

However, Class Counsel also understands the risks inherent in this claim should Plaintiffs' failure to pay wages claims not be certified. Class Counsel also had to factor in, and did factor in, the risk that a Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendant's conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also notes that the calculation used does not take into account the first pay period violation only being $50 and the fact that all Class Members did not work all pay periods and therefore do not qualify for the maximum penalty of $4,000 as calculated in Plaintiffs' exposure model used at mediation.

7. <u>Waiting Time Penalties</u>

Pursuant to Labor Code sections 201, 202, and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment. Class Counsel theorized that the full 30-day penalty is owed under Labor Code section 203 due to Defendant's failure to pay wages for all hours worked and failure to pay premium wages. The documents and information provided by Defendant reflects that there were approximately 217 terminated Class Members employed by Defendant during the relevant time period. Thus, Class Counsel calculated **Defendant's maximum exposure for waiting time penalties to be $739,015**. (217 terminated Class Members x $14.19/hour x 8 hours/day x 30 days.)

Defendant contends that there is no credence to Plaintiffs' off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory. Defendant further defends that failure to pay premium pay is not a basis for waiting time penalties to issue, citing *Naranjo* again. Finally, Defendant contends that their actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendant argues that no waiting time penalties are owed.

8. <u>PAGA Penalties</u>

The time and payroll data provided by Defendant reflect that there were approximately 9,228 pay periods in the PAGA Period through mediation. Plaintiffs' claims in the Action under PAGA are substantially similar to those described herein, except Plaintiffs also advanced a theory at mediation that Defendant failed to provide notices as required under Labor Code section 2810.5.

PAGA penalties include penalties for initial violations and subsequent violations. Defendant contends that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. Specifically, Defendant contends that until "notified that it is violating a Labor Code provision … the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties." (*Amaral v. Cintas Corp. No. 2* [*Amaral*] (2008) 163 Cal. App. 4th 1157, 1209.) Thus, Defendant contends that subsequent violations in the PAGA context means not just later in time but following notice to the employer that it is in violation of the Labor Code. With this in mind, and because Class Counsel through investigation and discovery did not come to the conclusion that Defendant at any time was notified by any governmental entity that they violated any Labor Code sections presented in the Marroquin PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for

Defendant to include only initial violation rates.

While Class Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendant's maximum exposure in PAGA penalties as follows:

a. Overtime Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $922,800. (9,228 pay periods x $100.)

c. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the Settlement Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

e. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendant indicates that there are 217 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $21,700. (217 Aggrieved Employees x $100.)

f. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. (*Id.* at 247-248.) Using the initial pay period rate for all violations, and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $922,800. (9,228 pay periods x $100.)

g. Failure to Indemnify for Business Expenses: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $461,400. (9,228 pay periods x $50.)

h. Violation of Labor Code § 2810.5: Upon hire, Defendant must provide each Aggrieved Employee a notice under Labor Code section 2810.5 with the information set out under that Labor Code section. Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Plaintiff understands Defendant to concede that no such notices were provided. There were, according to the data provided by Defendant, approximately 217 Aggrieved Employees hired during the PAGA Period. This amounts to a maximum exposure, using the initial violation rate, of $21,700. (217 Aggrieved Employees x $100.).

i. Conclusion: In sum, Class Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be $3,734,600.

Class Counsel understand from the mediator and the mediation process that Defendant argued the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked and that, even if they could, very few Courts have ever exercised discretion to stack them. Second, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial pursuant to *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746. Third, Defendant denies that a violation for each pay period can be established. Defendant states that because the PAGA penalties rely upon substantially similar allegations made in the Action, they are subject to the same defenses, and, thus, for the same reason Defendant believes there will be no damages collectible in the class action and no PAGA penalties would be awarded. Fourth, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiffs that would show any Labor Code violation by Defendant is knowing and intentional that would justify PAGA penalties. Defendant insists that this is especially true in this Action where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages an unjust, arbitrary, oppressive, or confiscatory double recovery. Thus, Defendant contends that the Court cannot, should not, and will not exercise its discretion to award any penalties under PAGA.

Class Counsel maintain that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). Class Counsel also understand the risks inherent should the Court not exercise its discretion to grant any PAGA penalties, in addition to potential issues on the merits, trial manageability, and issues the possibility that the Court does not use permit stacking of penalties or permit the use of the subsequent violation rate when providing penalties. As such, Class Counsel believes a 75% discount of this claim to be reasonable, resulting in a valuation of **$933,650 as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties**. ($3,734,600 x .25.)

9. <u>Conclusion</u>

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately **$8,097,089**. However, this maximum exposure did not take into account all of Defendant's defenses, including, without limitation, that: (1) Defendant's policies regarding tasks performed off-the-clock, the claim is not certifiable and does not lend itself to a manageable trial; (2) not all Class Members performed tasks off-the-clock every shift and thus the damages attributed to this line item are excessive; (3) in light of Defendant's policies regarding meal period policies, the claim is not certifiable and does not lend itself to a manageable trial; (4) in light of Defendant's policies regarding rest period policies, the claim is not certifiable and does not lend itself to a manageable trial; (5) Plaintiff's claims for wage statement and waiting time penalties are derivative of the above-referenced claims and if those fail, these would fail too; (6) if *Naranjo* is upheld, there would be no derivative wage statement and waiting time penalties for the failure to provide premium pay, thus creating an even greater risk that the derivative penalties never issue; (7) Defendant's failure to pay wages was not willful and that thus no waiting time penalties or wage statement violations are owed; (8) no injury was suffered by Class Members and thus no wage statement violations are owed; (9) Plaintiff's calculation of its exposure for PAGA penalties is excessive and unrealistic as it assumes that the Court will permit the stacking of eight penalties and find that there was a violation every pay period by ever Aggrieved Employee in connection with every theory without any reduction whatsoever of the maximum penalties sought; and (10) the Court will exercise its discretion to grant PAGA penalties at all in light of the fact that damages are available in connection with Plaintiff's class claims, thus creating double the liability for the same violations for Defendant.

In all, Class Counsel obtained a Gross Settlement Amount of $**1,118,580.00**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the manner in which the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable, and adequate settlements, Class Counsel strongly believes that the settlement reached is fair, reasonable, and adequate and in the best interest of Class Members.

Moreover, $50,000 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendant may be unnecessarily punitive.

VII. <u>THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE</u>

Class Counsel seeks an attorneys' fees award of thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $391,503.00. Class Counsel also seeks reimbursement of costs not to exceed $30,000.00. The requested fee falls well within the historical range of attorney's fee awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis. Indeed, extensive investigation was done before and after litigation began with the help of Plaintiffs and consultants that included detailed review of time and payroll records; months of negotiations between opposing counsel, as well as discussion of diametrically opposed viewpoints regarding the certifiability of Plaintiffs' claims, the merits of Plaintiffs' claims, the manageability of those claims at a class action or representative action trial, including what settlement terms would be just and proper. Moreover, significant expense was expended, including filing fees, the utilization of forensic consultants to help analyze time and payroll records, time spent with Plaintiffs by telephone, as well as attending a full-day mediation session to try to resolve the Litigation, among other things.

The California Supreme Court has recently expressly recognized that the awarding of a percentage of the "common fund" created as a result of the settlement is an appropriate method for the calculation of an attorneys' fees award in a class action. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503-504.)

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *accord Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 489.) In *Quinn v. State of California* (1995) 15

Cal.3d 162, the California Supreme Court stated that "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at 110.) The reasons for applying the common fund doctrine further include:

> "…fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful."

(*Id.*)

The "lodestar method", which focuses on the amount of work done, is the alternative method for determining attorney fee awards. (*Lafitte v. Robert Half Intern Inc.* (2016) 1 Cal.5th 480, 489.) Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373:

> "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!' Not only do the *Lindy Kerr-Johnson* analyses consume an undue amount of court time with little resulting advantage to anyone, but in fact, it may be to the detriment of the class members. They are forced to wait until the court has done a thorough, conscientious analysis of the attorneys' fee petition. Or, class members may suffer a further diminution of their fund when a special master is retained and paid from the fund. Most important, however, is the effect the process has on the litigation and the timing of settlement. Where attorneys must depend on a lodestar approach, there is little incentive to arrive at an early settlement."

(*Id.* at 1375.)

The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.* at 1378-79.)

This was reaffirmed in 2016 by the California Supreme Court, as well. The California Supreme Court noted that "[c]urrently, all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method." (*Lafitte v. Robert Half Intern Inc.* (2016) 1 Cal.5th 480, 493, citations omitted.) It further noted that "the Third Circuit itself holds that while both methods of calculating a fee may be used, the percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure." (*Id.*, citing *In re Rite Aid Corp. Securities Litigation* (3rd Cir. 2005) 396 F.3d 294, 300, quotations omitted.) And, as the California Supreme Court stated, "[m]ost state courts to consider the question in recent decades have also concluded the percentage method of calculating a fee award is either preferred or within the trial court's discretion in a common fund case." (*Id.*at 494.)

The California Supreme Court noted that even "[t]he American Law Institute has also endorsed the percentage method's use in common fund cases, with the lodestar method reserved mainly for awards under fee shifting statutes where the percentage method cannot be applied or would be unfair due to specific circumstances of the case. (*Id.*, citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13.) It continued:

> "Although many courts in common-fund cases permit use of either a percentage-of-the-fund approach or a lodestar (number of hours multiplied by a reasonable hourly rate), most courts and commentators now believe that the percentage method is superior. Critics of the lodestar method note, for example, the difficulty in applying the method and cite the undesirable incentives created by that approach—i.e., a financial incentive to extend the litigation so that the attorneys can accrue additional hours (and thus, additional fees). Moreover, some courts and commentators have criticized the lodestar method because it gives counsel less of an incentive to maximize the recovery of the class."

(*Id.*, citing ALI, Principles of the Law of Aggregate Litigation (2010) § 3.13, com. b.)

While the percentage method has been generally approved in common fund cases, courts have sought to ensure the percentage fee is reasonable…" (*Id.* at 495, citations omitted.) Notably, one-third of the common fund was the exact amount requested by class counsel in *Lafitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480. (*Id.* at 486.) In that case, the trial court rejected the one-third common fund award and was reversed by the California Supreme Court who determined that the trial court erred by not approving one-third of the common fund as class counsel's attorneys' fees award. (*See Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 485-486, 506.)

This is also in line with attorney fee awards historically awarded in common fund cases. Specifically, historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (Newberg on Class Actions, § 14.03; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1378.) According to Newberg on Class Actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund." Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (Newberg on Class Actions, § 14.03.) Newberg on Class Actions further notes: "achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed." (*Id.* at § 14.01, p. 14-10:14-11.)

Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this class action and representative action on a purely contingency basis. The factual and legal issues posed in this case were evolving and difficult. Class Counsel has easily already expended hundreds of hours on this matter, including:

- The investigation of the matter, including meeting with Plaintiffs, reviewing policies, Plaintiff's time and pay records, Plaintiffs' personnel file, and exploring Defendant's corporate structure;
- Filing and serving pleadings in the two (2) actions;
- Compliance with prerequisites in connection with Plaintiff Marroquin's cause of action under PAGA;

- Preparing notices, meeting and conferring with counsel for Defendant to prepare joint reports, and discussing the matter in big picture early on in the Litigation;
- Discussing the potential merits of mediation, as well as negotiating the parameters thereof and the informal discovery to be exchanged beforehand, which involved various iterations of written correspondence back and forth and several telephone discussions between counsel regarding the potential scope of discovery, as well as the scope of the pleadings;
- Obtaining and reviewing informal discovery;
- Working with opposing counsel and consultants for the receipt of a representative sampling and analyzing the same with the aid of expert consultants and Plaintiffs to perform analyses of liability and exposure;
- Selecting a mediator and mediation date;
- Preparation of a mediation brief and damages model for use at the mediation session;
- Attendance at the mediation session;
- Negotiating, finalizing, and fully executing the Settlement Agreement;
- Communicating with Plaintiffs who requested updates or other information regarding this matter; and
- Preparing the instant motion for preliminary approval.

Moreover, based on Class Counsel's past experience in wage and hour class action litigation, Class Counsel is very likely to be called upon, after the Class Notice has been sent, to expend substantial amounts of additional time to help Class Members understand the terms of the proposed settlement, and to assist Class Members in the preparation and documentation of their claims. It is also likely that, even after final approval of the settlement has been granted, Class Counsel will be called upon to expend additional amounts of time in the presentation and resolution of contests and disputes relating to Class Members' claims under the terms of the proposed settlement, as to the amounts of individual claims and perhaps other individual issues. Finally, Class Counsel will have to work with the Settlement Administrator to submit a report to this Court regarding the distribution plan pursuant to Code of Civil Procedure section 384 along with a proposed judgment, which will require further time and cost to be expended.

Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendant and are well within established guidelines.

VIII. THE REQUESTED ENHANCEMENT AWARDS TO THE NAMED PLAINTIFFS AND CLASS REPRESENTATIVES ARE REASONABLE

Plaintiffs are entitled to an enhanced award for their service as class representative, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, for the risk in being the named plaintiffs, and for providing Defendant with a more expansive release of claims, including a waiver based upon California Civil Code section 1542 (for Plaintiff Mendoza only), in exchange for the enhancement award. Defendant does not oppose the requested enhancements to Plaintiffs. Class Counsel can attest that Plaintiffs devoted a great deal of time assisting Class Counsel in this case, communicated with counsel very frequently, and were very valuable participants in the strategy for and success of the mediation. Plaintiffs risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seeks an extremely limited enhancement of $7,500.00 each to Plaintiff Mendoza and Plaintiff Marroquin, for a total of $15,000.00 to Plaintiffs, for their service, which is commensurate to the time and effort they have put forth in the prosecution of this matter.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class Should Be Preliminarily Certified

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class" and; (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) In addition, as set forth above, California courts utilize the procedures prescribed by the

Federal Rules of Civil Procedure in class actions filed in California. (*Schneider v. Vennard* (1986) 183 Cal.App.3d 1340, 1345-46; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 695; *Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800.) Indeed, to certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class." (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

Each of the criteria for class certification is satisfied in this instance:

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. One may also examine the means available to identify class members, but this is not the exclusive test. (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980-981.)

Here, the Class Member definition (*i.e.*, all current and former non-exempt, hourly-paid employees who worked in California for Defendant at any time during the Class Period) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are chiefly, and in some instances, solely applicable to non-exempt, hourly-paid employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a non-exempt, hourly-paid employee of Defendant who worked in California during the Class Period based solely from Defendant's payroll records, which amounts to approximately 459 persons per Defendant's records. Furthermore, the Technician Class Member definition (*i.e.* Class Members who performed technician duties including, but not limited to performing maintenance and repair, plumbing, electrical, carpentry, painting, cleaning, and responding to emergency maintenance requests, and worked for Defendant in California at any time during the Class Period) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are in some instances solely applicable to non-exempt, hourly-paid employees who performed technician duties such as Plaintiffs. It is apparent who is a

Technician Class Member solely from Defendant's payroll records, which amounts to approximately 201 persons. Thus, the Settlement Class is certainly ascertainable.

2. **Numerosity** – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.)

Defendant identified at least 459 Class Members and 201 Technician Class Members. That is sufficiently numerous to establish the numerosity requirement.

3. **Commonality** – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.) Common issues predominate when they would be "the principal issues in any individual action, both in terms of time to be expended in their proof and of their importance." (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 810; *see also Hatashi v. First American Home Buyers Protection Corp.* (2014) 223 Cal.App.4th 1454, 1462-1463.) Common questions need only be "sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits." (*Vasquez v. Sup. Ct.* (1971) 4 Cal.3d 800, 810.) Commonality is easily satisfied if there is one issue common to class members. (*Hanlon v. Chrysler Corp.* (9th Cir. 1988) 150 F.3d 1011, 1019.)

This Litigation is brought to resolve common issues that include, without limitation: (1) whether Class Members are entitled to pay for tasks performed off-the-clock; (2) whether Defendant's failed to include incentive bonuses in the regular rate of pay for the purposes of calculating overtime wages; (3) whether Defendant provided full, un-interrupted meal periods; (4) whether Class Members are entitled to premium pay interrupted meal periods; (5) whether Defendant provided full, un-interrupted meal periods; (6) whether Class Members are entitled to premium pay for interrupted rest periods; (7) whether Class Members are owed money for

Defendant's alleged failure to reimburse expenses incurred in furtherance of work; (8) whether the failure to pay for time worked off-the-clock entitles Class Members to waiting time penalties or wage statement violations; (9) whether the failure to pay due premium wages entitles Class Members to waiting time penalties or wage statement violations; (10) whether the failure to pay for all time worked was willful to justify waiting time penalties or wage statement violations; and (11) whether the failure to pay for all time worked constitutes an injury sufficient to justify wage statement violations.

4. Typicality – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) A representative plaintiff's claims are typical if they arise from the same event, practice, or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theories. (*Miller v. Woods* (1983) 16 Cal.App.3d 862, 874; *accord In re Broadwing, Inc. ERISA Litigation* (S.D. OH. 2006) 252 F.R.D. 369, 377, citing *In re Am. Med. Sys.* (6th Cir. 1996) 75 F.3d 1069, 1079, quot. Newberg on Class Actions, § 3-13 at 3-76.) Indeed, when the same underlying conduct affects the named plaintiffs and the class sought to be represented, the typicality requirement is met irrespective of any varying fact patterns that may underlie individual claims. (*See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473 [named plaintiff's interests must only be significantly similar to other class members].)

As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, explained:

> [I]t has never been the law in California that the class representative must have ***identical*** interests with the class members. The only requirements are that common questions of law and fact ***predominate*** and that the class representative be ***similarly*** situated.

(*Id*. at 1347, citations omitted, emphasis in original.)

Plaintiffs' claims are typical of those of other Class Members as Plaintiffs: (1) are non-exempt, hourly-paid employees like other Class Members; (2) complain of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendant; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; and (4) never received premium pay for rest periods that were not provided to Class Members.

Accordingly, Plaintiffs' claims are typical of those of the Class Members.

5. Adequacy of Representation - To maintain a class action, the representative plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representatives and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.)

Both criteria are met in this instance:

(i) <u>No Disabling Conflict of Interest Exist Between the Class Representative and the Class</u>

No conflicts, disabling or otherwise, exists between Plaintiffs and Class Members because Plaintiffs allege to have been damaged by the same alleged conduct of Defendant (*i.e.*, Plaintiffs were classified as a non-exempt employees, not paid premium pay, etc.) and thus have the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery. Moreover, Plaintiffs' goals have been realized via redress for employees whose wage and hour rights were violated.

(ii) <u>Class Counsel are Experienced Class Action Attorneys</u>

As set forth in the Declarations of Class Counsel, Class Counsel in this matter consist of experienced class action attorneys, have been appointed as class counsel in other class actions, and have a successful "track record" in litigating class actions. After a thorough investigation and settlement discussions, the Parties arrived at terms that they viewed was in the best interest of both the Class Members and the Parties. Should the Court refuse to grant preliminary approval of this Settlement, many of the Class Members may be denied any recourse for Defendant's alleged violations.

6. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

In that vein, "[t]his state has a public policy which encourages the use of the class action device." (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 299, citing *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 240) Indeed, "with respect to the superiority of the class action mechanism … courts regularly certify class actions to resolve wage and hour claims." (*Id.* at 300.) "In this arena the class action mechanism allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation." (*Ibid.*) Moreover, Plaintiff contends that the issues slated for contest are primarily common issues involving common evidence. Plaintiff contends that it would not be efficient or fair to relegate these complaints to multiple trials." (*Ibid.*, citing *Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208; *see Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034.)

> "Indeed, as the California Supreme Court elaborated in *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 'a theory of liability that an employer has a uniform policy and that that policy measured against wage order requirements, allegedly violates the law – is by its nature a common question entirely suited for class treatment. [Citation.] In the general case to prematurely resolve such disputes, conclude a uniform policy complies with the law, and thereafter reject class certification … places defendants in jeopardy of multiple class actions, with one after another dismissed until one trial court concludes there *is* some basis for liability and in that case approves class certification. [Citation.] It is far better from a fairness perspective to determine class certification independent of threshold questions disposing of the merits, and thus permit defendants who prevail on those merits, equally with those who lose on the merits, to obtain the preclusive benefits of such victories against an entire class and not just a named plaintiff.'

(*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 300, quot. *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1034.) The Court further noted that:

> "California courts consider 'pattern and practice evidence, statistical evidence, sampling evidence, expert testimony, and other indicators of a defendant's centralized practices in order to evaluate whether common behavior towards

> similarly situated plaintiffs make class certification appropriate. [Citation.] Other relevant factors include 'whether the class approach would serve to deter and redress alleged wrongdoing.' [Citation.] Moreover, in the wage and hour context, '[w]e have recognized that retaining one's employment while bringing formal legal action against one's employer is not 'a viable option for many employees,' 'and thus a class action may be appropriate as a current employee who individually sues his or her employer is at greater risk of retaliation.' [Citations.] And …our high court noted that class actions may be particularly useful for immigrant workers with limited English language skills, as illegal employer conduct might otherwise escape their attention.'"

(*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 300, citations omitted.)

The California Supreme Court has also noted that where individual suits are not brought by putative class members that this indicates that they have little interest in personally controlling their claims." (*Dynamex Operations West, Inc. v. Sup. Ct.* (2018) 4 Cal.5th 903, 924.) The Court should also consider that "consolidating all the claims before a single court would be desirable because it would allow for consistent rulings with respect to all the class members' claims." (*Ibid.*)

This wage and hour class action is a superior vehicle for resolution of the issues it seeks to resolve. It deals with common issues that are most efficiently adjudicated together, including: (1) whether Class Members are entitled to pay for tasks performed off-the-clock; (2) whether Defendant's failed to include incentive bonuses in the regular rate of pay for the purposes of calculating overtime wages; (3) whether Defendant provided full, un-interrupted meal periods; (4) whether Class Members are entitled to premium pay interrupted meal periods; (5) whether Defendant provided full, un-interrupted meal periods; (6) whether Class Members are entitled to premium pay for interrupted rest periods; (7) whether Class Members are owed money for Defendant's alleged failure to reimburse expenses incurred in furtherance of work; (8) whether the failure to pay for time worked off-the-clock entitles Class Members to waiting time penalties or wage statement violations; (9) whether the failure to pay due premium wages entitles Class Members to waiting time penalties or wage statement violations; (10) whether the failure to pay for all time worked was willful to justify waiting time penalties or wage statement violations; and (11) whether the failure to pay for all time worked constitutes an injury sufficient to justify wage statement violations.

Moreover, with approximately 459 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome on the Court. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation. It is also brought by a former employee who is not at the greater risk of retaliation than current employees who are less likely to seek such redress for themselves. In addition, Class Counsel is not aware of any other action against Defendant brought on an individual basis, which signals that Class Members have little interest in personally controlling their claims. Moreover, a class action would eradicate the concern of inconsistent rulings regarding the wage and hour issues brought as part of this class action.

7. Conclusion – Thus, because this class action meets all criteria for certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, it should be certified for purposes of effectuating this settlement. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 664, 654 ["[i]f the statutory criteria are satisfied, a trial court is under a duty to certify the class and is vested with no discretion to deny certification based upon other considerations"]; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1800, 1807, n. 19, citations omitted [there is a "lesser standard of scrutiny for settlement cases"].

X. <u>CONCLUSION</u>

The proposed Settlement Agreement is fair, adequate, and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation.

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve, and authorize mailing of the proposed Class Notice submitted herewith, and set a date for the final approval hearing.

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Dated: September 1, 2022

BIBIYAN LAW GROUP, P.C.

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
Attorneys for Plaintiffs, on behalf of themselves and all others similarly situated and aggrieved

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite 500, Beverly Hills, California 90211.

On September 1, 2022, I caused a true and correct copy of the foregoing document(s) described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATION OF DAVID D. BIBIYAN, VEDANG J. PATEL, JUSTIN F. MARQUEZ, AND SEAN HARTRANFT IN SUPPORT THEREOF; AND** [PROPSOED] **ORDER** to be served by electronic transmission via Case Anywhere to the parties and/or counsel who are registered to use Case Anywhere and set forth in the below service list:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on September 1, 2022 at Beverly Hills, California.

/s/ Emanuel Munguia
Emanuel Munguia

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