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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

JOSE CELAYA, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

GLP SERVICES LLC, a Delaware limited
liability company; GREENLEAF POWER
LLC, a Delaware limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CVRI2101796

[Assigned to the Honorable Harold W. Hopp in Dept.
10]

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

Date: November 1, 2022
Time: 8:30 a.m.
Dept.: 10

Reservation ID: 287743816407

Complaint Filed: April 8, 2021
Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 November 1, 2022 at 8:30 a.m. in Department 10 of the above-entitled Court, located at 4050 Main
4 Street, Riverside, California 92501, Plaintiff Jose Celaya ("Plaintiff"), individually and on behalf of a
5 class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification
8 of the following Settlement Class defined as follows:

9 All current and former non-exempt, hourly, employees of Defendant GLP
10 Services, LLC who worked in California at any time between April 8, 2017 and
11 the date of preliminary approval (or the earlier date if Defendant exercises its
rights under Paragraph 4.E.¹ to shorten the Class Period).

- 12 3. Preliminary appointment of Plaintiff Jose Celaya as Class Representative;
13 4. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
14 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
15 5. The scheduling of a hearing to consider whether the Settlement should be finally approved
16 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
17 payable to the California Labor Workforce Development Agency, and attorneys' fees and
18 costs to Class Counsel;
19 6. Appointment of Phoenix Settlement Administrators ("Phoenix") as the third-party
20 Settlement Administrator for mailing notices; and
21 7. Approval of the proposed Notice Packet (which is comprised of: (i) the Notice of
22 Pendency of Class Action and Proposed Settlement; (ii) Dispute Regarding Notice of
23

24 ¹ Defendant represents that there are an estimated 12,065 workweeks during the Class Period as of April 29,
25 2022. If the number of workweeks during the Class Period is more than 15% greater than this figure (*i.e.*, if
26 there are 13,875 or more workweeks worked by the Settlement Class Members during the Class Period),
27 Defendant agrees to increase the Gross Settlement Amount on a proportional basis by the amount by which it
28 exceeds 15% (*i.e.*, if there was a 16% increase in the number workweeks during the Class Period, Defendant
would agree to increase the Gross Settlement Amount by 1%). If this escalator clause is triggered and the more
than 15% increase is reached prior to preliminary approval, Defendant has the option of ending the Class Period
and the PAGA Period on the date on which the workweeks reach 13,874 in lieu of being required to increase
the Gross Settlement Amount. Settlement, ¶ 4.E.

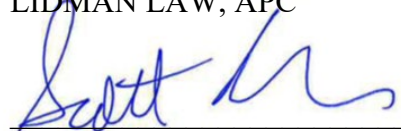
1 Settlement; (iii) Request for Exclusion Form; and (iv) Objection Form), which are attached
2 to the Settlement as Exhibits B-E, respectively, and an order that it be disseminated to the
3 proposed Settlement Class Members as provided in the Settlement Agreement.

4 This Motion is based on this notice of motion, the memorandum of points and authorities, the
5 declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Plaintiff Jose
6 Celaya, Kevin Jackson of Foley & Lardner LLP, Kendra Sage of GLP Services LLC and Jodey
7 Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and
8 other papers filed in this action, and on any further oral or documentary evidence or argument
9 presented at the time of hearing.

10
11 Dated: September 15, 2022

Respectfully submitted,
LIDMAN LAW, APC

12
13 By:



14 Scott M. Lidman
15 Attorney for Plaintiff
16 JOSE CELAYA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose Celaya (“Plaintiff”) has reached a proposed wage and hour class and representative action settlement with Defendant GLP Services LLC (“GLP” or “Defendant”). In the First Amended Complaint filed on June 14, 2021, Plaintiff alleges that GLP²: (1) failed to pay all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to timely pay all wages upon termination; (6) engaged in unlawful business practices; and (7) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,³ in which GLP has agreed to pay \$800,000.00 to the following Settlement Class:
All current and former non-exempt, hourly, employees of Defendant GLP Services, LLC who worked in California at any time between April 8, 2017 and the date of preliminary approval (or the earlier date if Defendant exercises its rights under Paragraph 4.E.⁴ to shorten the Class Period).

Significantly, all Settlement Class members will automatically receive a payment unless they affirmatively opt-out. There are approximately 111 Settlement Class members and the Individual Settlement Payments are between approximately \$15.91 and approximately \$10,729.48 depending on the number of workweeks the individual worked, with an average of \$4,021.47. Additionally, there are approximately 73 PAGA Employees that will receive a portion of the \$12,500 PAGA Amount, which results in an average payment of \$171.23, ranging from \$1.09 to \$347.08.

The Settlement was reached only after the parties mediated the action with Jeffrey A. Ross, a well-respected wage and hour class action mediator. In connection with mediation, GLP produced timekeeping and payroll records for Plaintiff and the entire putative class for the time period of January

² On June 27, 2021, pursuant to a request by Plaintiff, the Court in the Action dismissed Greenleaf Power, LLC from the Action without prejudice.

³ The Stipulation of Class Action and PAGA Settlement (“Settlement”) is attached to the Declaration of Scott M. Lidman (“Lidman Decl.”) as Exhibit 1. All defined terms in this motion have the same definitions as used in the Settlement.

⁴ Defendant represents that there are an estimated 12,065 workweeks during the Class Period as of April 29, 2022. If the number of workweeks during the Class Period is more than 15% greater than this figure (*i.e.*, if there are 13,875 or more workweeks worked by the Settlement Class Members during the Class Period), Defendant agrees to increase the Gross Settlement Amount on a proportional basis by the amount by which it exceeds 15% (*i.e.*, if there was a 16% increase in the number workweeks during the Class Period, Defendant would agree to increase the Gross Settlement Amount by 1%). If this escalator clause is triggered and the more than 15% increase is reached prior to preliminary approval, Defendant has the option of ending the Class Period and the PAGA Period on the date on which the workweeks reach 13,874 in lieu of being required to increase the Gross Settlement Amount. Settlement, ¶ 4.E.

1 1, 2018 – March 6, 2022, documents regarding its wage and hour policies, and other information. After
2 research and analysis, including a detailed analysis of GLP’s potential exposure, a mediation was held
3 on April 29, 2022. Ultimately, the Parties agreed on a class-wide resolution, subject to approval by this
4 Court. Since mediation, the Parties finalized the terms and executed the Settlement that is now being
5 submitted for this Court’s preliminary approval.

6 If the Settlement is approved, GLP will pay a non-reversionary Gross Settlement Amount
7 (“GSA”) of \$800,000.00. After deducting administration costs, Plaintiff’s service award, attorneys’ fees
8 and costs, and payment of PAGA penalties, the remaining Net Settlement Amount (“NSA”) of
9 approximately \$446,383.33 will be distributed to all Settlement Class members who do not opt-out of
10 the Settlement, which does not include 25% of the \$50,000.00 PAGA Amount (or \$12,500.00)
11 designated as the PAGA Amount to be distributed to certain Settlement Class members who worked
12 during the PAGA period.

13 This proposed Settlement is well-within the range of possible approval in light of the significant
14 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
15 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff
16 respectfully requests that the Court grant preliminary approval of the Settlement.

17 **II. ARGUMENT**

18 **A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE** 19 **COURT’S CASE MANAGEMENT ORDER FOR PRELIMINARY APPROVAL**

20 Settlement is the preferred means of dispute resolution, particularly in complex class action
21 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in
22 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair and
23 for the court to determine “whether a proposed settlement is fundamentally fair, adequate, and
24 reasonable”. *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026-27. There is an initial
25 presumption of fairness where, as here, the Settlement agreement was negotiated at arm’s-length by
26 class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.*
Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.

27 To make a fairness determination, the Court should consider several factors, including: “the
28 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk

1 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
2 completed and the stage of the proceedings, [and] the experience and views of counsel.” *Dunk v. Ford*
3 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to
4 engage in a balancing and weighing of the factors depending on the circumstances of each case.”
5 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 230, 245. As discussed below the proposed
6 Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case. The
7 following paragraph numbering coincides with the paragraph numbering set forth in the Court’s Case
8 Management Order (“CMO”) entered on August 25, 2020 under Section G of the CMO entitled
9 “Motions for Preliminary Approval.” Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 39, Exh. 2.

10 **G.1. SETTLEMENT AGREEMENT⁵**

11 The written Stipulation of Class Action and PAGA Settlement (“Settlement”) has been signed by
12 all necessary parties and filed as Exhibit 1 to the Declaration of Scott M. Lidman. Lidman Decl., ¶ 13,
13 Exh. 1.

14 **G.3. MEMORANDUM OF POINTS AND AUTHORITIES**

15 **G.3.a.i. Estimate Of The Number of Individuals In The Class**

16 Here, the proposed Settlement Class is defined as: “All current and former non-exempt, hourly,
17 employees of Defendant GLP Services, LLC who worked in California at any time between April 8,
18 2017 and the date of preliminary approval (or the earlier date if Defendant exercises its right under
19 Paragraph 4.D. to shorten the Class Period).” Lidman Decl., ¶ 14. There are approximately 105
20 Settlement Class Members. *Id.*

21 Further, the proposed group of PAGA Employees is defined as: “All current and former non-
22 exempt, hourly, employees of Defendant GLP Services, LLC who worked in California at any time
23 between April 8, 2020 and the date of preliminary approval (or the earlier date if Defendant exercises its
24 right under Paragraph 4.D. to shorten the Class Period).” Lidman Decl., ¶ 14. There are approximately
25 67 PAGA Employees. *Id.*

26 **G.3.a.ii. Estimate Of The Total Amount Of Damages If Entirely Successful At Trial**

27 Off-The-Clock: Plaintiff alleges that GLP failed to compensate its non-exempt employees for all
28 time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges that GLP required him and other non-
exempt employees to complete pre-shift tasks including, without limitation, getting a radio with a

⁵ All declarations referenced herein are being submitted concurrently herewith in Plaintiff’s Compendium of
Declarations Filed in Support of Motion for Preliminary Approval of Class Action Settlement.

1 charged battery, donning his safety gear including glasses, earplugs and face mask, servicing the
2 machines, and going to the control room. *Id.* Plaintiff further contends that the time during the handoff
3 was also not compensated for the employee coming off work. *Id.* Moreover, Plaintiff alleges that up
4 until approximately June 1, 2021, GLP would unlawfully shave his work time and/or round his work
5 time such that Plaintiff would not be fully paid for all time worked. *Id.* Accordingly, based on the
6 underpayment of 20 minutes/shift or 1.67 hours per workweek for off-the-clock work and 5
7 minutes/shift or .42 hours/workweek for average rounding, and given that most shifts were over 8.0
8 hours, Plaintiff calculated GLP's exposure for this claim at approximately \$999,292 ((12,065
9 workweeks x 1.67 hr/ workweek x \$41.10 average OT rate) + (9,917 workweeks with rounding x .42 per
10 workweek x \$41.10 average OT rate)). *Id.*

11 Miscalculation of Regular Rate (Incentive Pay): Plaintiff alleges that at times during his
12 employment with GLP, he and other non-exempt employees were paid non-discretionary bonuses,
13 (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Lidman
14 Decl., ¶ 18. Plaintiff alleges that GLP failed, however, to include the Incentive Pay when calculating
15 the regular rate of pay for purposes of paying Plaintiff and the other non-exempt employees' overtime
16 wages. *Id.* Accordingly, Plaintiff contends that GLP did not properly calculate the regular rate of pay
17 for Plaintiff and the other non-exempt employees, thereby causing them to be underpaid for all their
18 required overtime wages. *Id.* The Incentive Pay ranged from \$1,476.56 to \$3,964.17. Moreover, the
19 average overtime hours worked annually was 88.43 or approximately 1.7 hours/workweek and average
20 underpayment per year is \$17.16 or \$0.33/workweek. Therefore, Plaintiff estimated GLP's maximum
21 exposure at approximately \$6,768 (12,065 workweeks x 1.7 OT hours/week x 0.33
22 (underpayment/week)). *Id.*

23 Meal Period Violations: Plaintiff alleges that he and Settlement Class members were not provided
24 with all legally-required off-duty first meal periods beginning before the end of the fifth hour of work.
25 Lidman Decl., ¶ 20. Specifically, Plaintiff alleges that due to the work demands imposed by GLP,
26 Plaintiff was often prevented from taking meal periods that commenced before the end of the 5th hour of
27 work and/or which were at least 30 minutes in length. *Id.* Based on the timekeeping records produced in
28 connection with mediation, 92% of the shifts were over 6 hours and approximately 63% of the meal
enabling shifts had meal periods that appeared to be non-compliant. *Id.* Therefore, Plaintiff calculated

1 GLP's maximum exposure for the alleged meal period violations at approximately \$958,024 (12,065
2 workweeks x 5 shifts per workweek x .92% (shifts over 6 hours) x .63 (non-compliance rate) x \$27.40
3 (average hourly rate)). *Id.*

4 Rest Period Violations: Plaintiff alleges that he and other Settlement Class members were not
5 authorized and permitted to take all required rest periods due to GLP's unlawful rest period policies and
6 practices that failed to authorize and permit all rest periods for every four hours worked, *or major*
7 *fraction thereof*. Lidman Decl., ¶ 22. Specifically, Plaintiff alleges that during his employment, GLP
8 maintained a facially unlawful rest period policy that required employees to remain on the premises for
9 rest breaks. *Id.* Plaintiff contends that such alleged rest periods were unlawful, however, as Plaintiff
10 was not relieved of all duties. As a result, Plaintiff estimated that he and other Settlement Class
11 members experienced at least one rest period violation for every shift over 3.5 hours. *Id.* Therefore,
12 Plaintiff calculated GLP's maximum exposure for the alleged rest period violations at approximately
13 \$1,652,905 (12,065 workweeks x 5 shifts per workweek x \$27.40 average hourly rate). *Id.*

14 Wage Statement Violations: Plaintiff alleges that GLP issued inaccurate wage statements in
15 violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period premium
16 wages described above. Lidman Decl., ¶ 24. Specifically, Plaintiff contends that this conduct violated
17 Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include
18 all hours worked and the rate at which they were being paid. *Id.* Therefore, Plaintiff calculated GLP's
19 maximum exposure for wage statement violations at approximately \$239,150 (($\50.00×43 current
20 employees) + ($\$100.00 \times 2,370$ subsequent wage statements)). *Id.*

21 Waiting Time Penalties: Plaintiff alleges that GLP is also liable for waiting time penalties under
22 Labor Code section 203 as a result of its failure to pay all wages. Lidman Decl., ¶ 26. Based on the data
23 provided by GLP, there were approximately 48 Settlement Class members who have separated their
24 employment with GLP during the relevant time period and who could be entitled to waiting time
25 penalties. Therefore, Plaintiff calculated GLP's maximum exposure for waiting time penalties at
26 approximately \$315,648 (48 former employees x \$27.40 [average regular rate] x 30 days x 8 hours/day).
27 *Id.*

28 PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the
foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. The specific statutory violations upon

1 which Plaintiff bases the claim under PAGA are: (i) Labor Code sections 204, 510, 558, 1194, and 1198
2 for failing to pay all overtime wages owed; (ii) Labor Code sections 1194 1194.2, 1197 for failing to pay
3 all minimum wages owed; (iii) Labor Code sections 226.7, 512, and 558 for meal period violations; (iv)
4 Labor Code sections 226.7, 516, and 558 for rest period violations; (v) Labor Code section 226(e) for
5 failing to provide accurate, itemized wage statements; (vi) Labor Code section 201 through 203 for
6 failing to pay all wages owed upon termination. *Id.* Based on the data provided by GLP in connection
7 with mediation, there are approximately 67 aggrieved employees and approximately 2,413 pay periods
8 during the relevant time period. Based on the violations addressed above, Plaintiff contends that GLP is
9 liable for PAGA civil penalties for each of the 2,413 pay periods worked during the PAGA period.
10 Accordingly, Plaintiff calculated GLP's exposure at \$241,300 (2,413 pay periods x \$100 initial violation
11 rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial"
12 violation rate applies until employer is notified that it is violating a Labor Code provision).

13 Therefore, if Plaintiff was successful on every claim at trial, Plaintiff estimates the collective
14 total on all claims to be approximately \$4,413,087.00. Lidman Decl., ¶ 30.

15 **G.3.a.iii. Total Amount of Damages Taking Into Account Defendant's Defenses**

16 Off-the-Clock: GLP contends that it compensated non-exempt employees for all of their time
17 worked. Lidman Decl., ¶ 17. GLP also contends that its timekeeping and payroll documents produced
18 in connection with mediation demonstrate that employees were paid to the minute. GLP contends its
19 timekeeping practices and policies were lawful and any unpaid time was *de minimis* and therefore non-
20 compensable. *Id.* GLP also asserts that Plaintiff would be unable to certify a rounding claim given the
21 individualized inquiries that would be required. *Id.* Accordingly, based on these risks, Plaintiff
22 discounted the maximum exposure of \$999,292 by 45% for the risk of non-certification, and an
23 additional 40% to account for GLP's defenses on the merits to arrive at an estimated exposure of
24 \$329,766.36. *Id.*

25 Miscalculation of Regular Rate (Incentive Pay): GLP contends that Settlement Class members
26 received all overtime wages to which they were entitled. Lidman Decl., ¶ 19. GLP further counters that
27 any bonuses paid to putative class members during the relevant time period were discretionary and did
28 not to be included in the regular rate of pay for overtime purposes. See 29 C.F.R. §§778.208, 778.211
(excluding "discretionary" bonuses from the regular rate); see also DLSE Manual § 49.1.2.4(3)

(bonuses are discretionary, and therefore excludable, if “both the fact that payment is to be made and the amount of the payment” are discretionary). *Id.* Accordingly, based on these risks, Plaintiff discounted the maximum exposure of \$6,768 by 25% for the risk of non-certification, and an additional 30% to account for GLP’s defenses on the merits to arrive at an estimated exposure of \$3,553.20. *Id.*

Meal Period Violations: GLP counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of GLP. Lidman Decl., ¶ 21. GLP points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, GLP contends Plaintiff’s meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure of \$958,024 by 25% for the risk of non-certification, and an additional 35% to account for GLP’s defenses on the merits to arrive at an estimated exposure of \$467,036.70. *Id.*

Rest Period Violations: GLP contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 23. Further, GLP argues that Plaintiff’s rest period claims are inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure of \$1,652,905 by 45% for the risk of non-certification, and an additional 30% to account for GLP’s defenses on the merits to arrive at an estimated exposure of \$636,368.43. *Id.*

Wage Statement Violations: GLP argues that meal and rest period claims cannot support a claim

1 for wage statement penalties after *Naranjo v. Spectrum Security Services, Inc.*, review granted⁶, (2019)
2 40 Cal. App. 5th 444 and *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244 (see, e.g., *Jones*
3 *v. Spherion Staffing*, No. LA-CV-11-06462-JAK(JCx) (C.D. Cal. 2012) 2012 WL 3264081 at **8-9).
4 Lidman Decl., ¶ 25. GLP further argues that its alleged wage statement violations could not be shown to
5 be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed]
6 injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
7 imposition of penalties. *Id.* As such, Plaintiff discounted the calculated exposure of \$239,150 by 30%
8 for a risk of non-certification and an additional 25% for a risk of being unsuccessful on the merits to
9 arrive at an estimated total of \$125,553.75. *Id.*

10 Waiting Time Penalties: GLP asserts it has strong defenses to the waiting time claim because
11 there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties.
12 Lidman Decl., ¶ 27. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due
13 will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963
14 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of
15 waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum
16 exposure of \$315,648 by 30% for the risk of non-certification, and an additional 40% to account for
17 GLP’s defenses on the merits to arrive at an estimated exposure of approximately \$132,572.16. *Id.*

18 PAGA Civil Penalties: GLP argues that Plaintiff’s PAGA claim will fail for the same reasons that
19 her underlying claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192
20 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA
21 claims also fail.”). GLP also maintains that, given its good faith defenses, this Court would exercise its
22 discretion to substantially reduce any PAGA penalties if it were to find GLP liable for any of Plaintiff’s
23 claims. *Id.* GLP further alleges that none of the violations would be deemed knowing and intentional as
24 there is no evidence to suggest GLP intentionally violated the Labor Code and that GLP’s policies and
25 procedures demonstrate that GLP acted in good faith regard to paying the putative class members all
26 wages due. For these reasons, GLP asserts that the Court would drastically reduce any award of PAGA
27 penalties as “confiscatory.” *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*

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⁶ The California Supreme Court issued its decision in *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, on May 23, 2022, after the Parties settled this matter.

(2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure of \$241,300 by 25% for a risk of being unsuccessful on the merits, and an additional 30% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$126,682.50. *Id.*

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately \$1,821,533.10. Lidman Decl., ¶ 30. The proposed settlement of \$800,000.00 therefore represents approximately 44% of the reasonably forecasted recovery for the Settlement Class.

The proposed settlement reflects approximately 44% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Settlement Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Settlement Class has had the opportunity to opt-out or object.

Class counsel has obtained 9 class certification orders following contested certification motions concerning similar claims. *See* Declaration of Paul K. Haines in Support of Motion for Preliminary Approval, ¶ 7. Class counsel has had a bench trial concerning individual wage and hour allegations in a misclassification matter, in which judgment was entered in favor of Plaintiff. Haines Decl., ¶ 9; Declaration of Scott M. Lidman in Support of Motion for Preliminary Approval, ¶ 9.

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G.3.a.iv. Estimate Of The Recovery By The Average Class Member

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the estimated Net Settlement Amount ("NSA") to be distributed to Settlement Class Members who do not opt out is expected to be at least **\$446,383.33**. Lidman Decl., ¶ 13, Exh. 1.

With approximately 111 Settlement Class Members, the average Individual Settlement Awards is projected to be approximately **\$4,021.47**, and range between approximately \$15.91 (for the Settlement Class Member that worked approximately .42 workweeks during relevant time period) and approximately \$10,729.48 for the Settlement Class Member(s) that worked the entire relevant time period and the Court grants preliminary approval on November 1, 2022). *Id.*

G.3.a.iv. Estimate Of The Recovery By The Average PAGA Employee

Moreover, \$12,500 of the GSA has been designated as the PAGA Amount to PAGA Employees. There are approximately 73 PAGA Employees, and thus, the average payment is approximately \$171.23 and range between approximately 1.09 (for the PAGA Employee that worked approximately .21 pay periods during the relevant time period) and approximately \$347.08 (for the PAGA Employee(s) that worked the entire relevant time period and the Court grants preliminary approval on November 1, 2022). *Id.*

G.3.a.vi. Formal And Informal Discovery Exchanged And Other Factual Investigation

This Settlement was a result of serious, informed, non-collusive negotiations with the assistance of an experienced class action mediator. After agreeing to participate in early mediation, GLP produced timekeeping and payroll records for Plaintiff and the entire putative class for the time period of January 1, 2018 – March 6, 2022, documents regarding its wage and hour policies, and other information. *See* Lidman Decl., ¶ 11. After the detailed review of the payroll and time records and other documents and policies produced by GLP, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id.* This discovery allowed the parties to assess the merits and value of Plaintiff's claims and GLP's defenses thereto, if a settlement could not be reached.

On April 29, 2022 after extensive research and analysis, including a detailed analysis of GLP's potential exposure, a full-day mediation was held with Jeffrey A. Ross, a well-respected wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their

opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses for the claims alleged in the operative complaint. *Id.*

Thus, the proposed Settlement is entitled to an initial presumption of fairness as it is the result of: factual investigation and data analysis; the exchange of substantial information and class data, including timekeeping and payroll records; arm's length negotiations by counsel; and mediation before an experienced wage and hour class action mediator. *See* Lidman Decl., ¶¶ 11-12; *See Kullar, supra*, 168 Cal.App.4th at 130. In addition, the parties attended a full-day mediation, and worked collaboratively in the following weeks to finalize the Settlement. *Id.* Thus, these factors support preliminary approval.

G.3.a.vii. Class Counsel's Awareness Of Any Other Class, Representative, Or Other Collective Actions

As of the date of the filing of the instant Motion, counsel for Plaintiff is unaware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the defined class. *See* Lidman Decl., ¶ 39; *See* Haines Decl., ¶ 12.

G.3.b. Defense Counsel's Awareness Of Any Other Class, Representative, Or Other Collective Actions

Counsel for GLP is also unaware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the defined class. *See* Declaration of Kevin Jackson of Foley & Lardner LLP, ¶ 3.

G.3.c. Uncashed Funds

The Settlement provides that Settlement Class members will have 180 days from the date the Settlement Administrator mails the checks to negotiate them. The funds from any uncashed checks shall be distributed to the Controller of the State of California - Unclaimed Property Fund in the name of the Settlement Class member. Settlement ¶ 5.F. As such, there is no "unpaid residue" under California Civil Procedure Code Section 384 and it is unnecessary to designate cy pres recipients. The NSA will be paid out to Class Members, whether or not they all cash their settlement checks. Lidman Decl., ¶ 41.

G.3.d. Settlement Administrator

Phoenix Settlement Administrator ("PSA") has extensive experience administering class action matters. PSA has administered complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, though final approval and

1 distribution. PSA has developed a system of quality assurance measures, to ensure the highest quality
2 service is provided in our cases and to class members. Declaration of Jodey Lawrence in support of
3 Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."), ¶ 5.

4 PSA's will charge a flat fee of \$6,950.00 for administration of the Settlement. See Lawrence
5 Decl. This request is reasonable in light of the proposed class size of approximately 105 Settlement
6 Class members and the costs and expenses associated with administering the Notice Packets and
7 distributing the awards. This cost estimate also includes the expenses associated with mailing the Notice
8 Packets in both English and Spanish.

9 **G.3.e Release of Claims**

10 **1. Released Parties**

11 Plaintiff and every member of the Settlement Class (except those who timely and properly
12 submit a Request for Exclusion as set forth below) will fully, forever and completely release and
13 discharge Defendant, Greenleaf Power, LLC and all of their past and present officers, directors,
14 employees, and agents. Settlement, ¶ 3. Although, Plaintiff originally contended that Greenleaf Power,
15 LLC was a joint employer, it was dismissed without prejudice as a named defendant in this action.
16 Greenleaf Power, LLC is now included in the release to avoid future claims of joint employer liability
17 and the Parties agreed that it is reasonable.

18 **2. Scope**

19 Settlement Class members and Plaintiff will release all claims, demands, rights, liabilities and
20 causes of action that were pled, or could reasonably have been pled based on the factual allegations, in
21 any of the Complaints in the Action that arose during the Class Period with respect to the following
22 claims: (a) failure to pay all minimum wages owed; (b) failure to pay overtime wages owed; (c) failure
23 to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and
24 permit rest periods, or premium pay for non-compliant rest periods; (e) failure to timely pay all wages
25 due upon separation of employment; and (g) all claims for unfair business practices that could have been
26 premised on the facts, claims, causes of action or legal theories described above. Lidman Decl., ¶ 13,
27 Exh. 1 (Settlement, ¶ 3.A).

28 Plaintiff on behalf of himself and the State of California, will release and forever discharge all
claims, demands, rights, liabilities and causes of action under the California Labor Code Private
Attorneys General Act of 2004 for penalties that could have been sought by the California Labor
Commissioner against the Released Parties as alleged in Plaintiff's April 8, 2021 letter to the LWDA
and to the extent alleged in the operative complaint in the Action based on the: the (a) failure to pay all

1 minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal periods, or
2 premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or
3 premium pay for non-compliant rest periods; and (e) failure to timely pay all wages due upon separation
4 of employment that occurred during the PAGA Period (collectively, "PAGA Released Claim"). The
5 Parties expressly acknowledge that the release on behalf of the State of California will extinguish any
6 and all claims for penalties that the State of California could have brought on behalf of the PAGA
7 Employees, and that the PAGA Employees therefore will, after judgment is entered in this Action
8 following final approval of the Settlement, be barred by the doctrines of res judicata and/or claim
9 preclusion from pursuing PAGA penalties with respect to the claims at issue in the in the operative
10 complaint and as alleged in Plaintiff's April 8, 2021 letter to the LWDA, whether brought on an
11 individual, representative, or collective basis. Settlement, ¶ 3.C.

12 Therefore, the language expressly confirms that the scope of the release is limited to the claims
13 which could have been asserted based on the same allegations as set forth in the operative complaint.
14 This is type of release is permissible in wage and hour class action settlements such as this one. (*Shine v.*
15 *Williams Sonoma* (2018) 23 Cal.App.5th 1070, 1078 ["A] judgment pursuant to a class settlement can
16 bar [subsequent] claims based on the allegations underlying the claims in the settled class action. This is
17 true even though the precluded claim was not presented, and could not have been presented, in the class
18 action itself," citations omitted].)

18 **3. Release Period**

19 The time period for the release of the Released Claims shall be the same time period as the Class
20 Period of April 8, 2017 through the date of preliminary approval of this Settlement Agreement (or the
21 earlier date if Defendant exercises its right under Paragraph 4.D. to shorten the Class Period). Lidman
22 Decl., ¶ 13, Exh. 1 (Settlement, ¶ 3.B). Further, the PAGA Period and the time period of the PAGA
23 Released Claims is defined as the time period July 23, 2019 through the date the Court enters the order
24 granting preliminary approval (or the earlier date if Defendant exercises its right under Paragraph 4.D. to
25 shorten the PAGA Period).

26 Additionally, the releases identified herein shall be null and void if the Gross Settlement Amount
27 is not fully funded. Lidman Decl., ¶ 13, Exh. 1 (Settlement, ¶ 3.F.).

27 **G.3.f. Mailing Of Notice Packets to Class Members By First-Class Mail**

28 Before the final approval hearing, the Court requires adequate notice of the settlement be given
to all class members. This Court should order distribution to the Settlement Class of the proposed

1 Notice Packet (which is comprised of: (i) the Notice of Pendency of Class Action and Proposed
2 Settlement; (ii) Dispute Regarding Notice of Settlement; (iii) Request for Exclusion Form; and (iv)
3 Objection Form)⁷ by first-class regular U.S. Mail, postage prepaid, using last known mailing address
4 information provided by GLP. *See* Lidman Decl., ¶ 13, Exh. 1 (Settlement, ¶10, Exhs. B through E).

5 This manner of giving notice is the “best notice practicable” under the circumstances because it
6 provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen*
7 *v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. The Notice Packet will be mailed in both Spanish
8 and English. *See generally* Lawrence Decl. and attached exhibits.

9 In this wage and hour class action, providing notice by U.S. Mail is the best notice practicable
10 under the circumstances because Settlement Class Members’ addresses will be ascertainable through
11 GLP’s personnel and payroll records. *See* Lidman Decl., ¶ 13, Exh. 1 (*See* Settlement ¶ 10.A).
12 Plaintiff contends this is the best method of giving notice because GLP currently employs some of these
13 class members, and therefore in possession of their current residential addresses. Further, GLP
14 maintains the last known addresses for its former employees as well. Therefore, because the residential
15 addresses are known for this small class of GLP’s former and current employees, mailing the Notice
16 Packet directly to their current address (for current employees) and last known address (for former
17 employees) is most likely to give actual notice to the greatest number of class members.

18 Further, within 14 calendar days of receipt of the Settlement Class Members’ addresses,
19 Phoenix will run the addresses through the United States Postal Service Notice of Change of Address
20 database (which provides updated addresses for any individual who has moved in the previous four
21 years and has notified the U.S. Postal Service of a forwarding address) and mail the notices to
22 Settlement Class members. *See* Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 10.B). To the extent that any
23 notices are returned, Phoenix will perform a “skip trace” to track any Class Member’s current mailing
24 address. *See See* Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 10.F).

25 **G.3.g. Submission of Claim Forms is Not Required**

26 Each Settlement Class member will automatically receive a Settlement Award unless he or she
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⁷ All are also attached as Exhibits A – D, respectively, to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

1 affirmatively opts out of the Settlement.⁸ *See* Lidman Decl., ¶ 13, Exh. 1 (Settlement at ¶ 5).

2 **G.3.h. No Reversion Of Any Settlement Funds Back To Defendant**

3 This Settlement is non-reversionary. As such, if an individual opts out of the Settlement, their
4 pro rata share of the Settlement shall be added to the NSA to be distributed to the Settlement Class
5 Members who do not opt out. Similarly, if the Court reduces the requested amounts for attorneys' fees,
6 costs, settlement administration costs, and/or class representative enhancement award, these amounts
7 will be added to the NSA to be distributed to the Settlement Class Members who do not opt out.

8 **G.3.i. Employer's Share Of Payroll Taxes**

9 The employer's share of payroll taxes shall be paid separately from, and in addition to, and the
10 Gross Settlement Amount. *See* Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 4.D).

11 **G.3.j. Tax Allocations**

12 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
13 allocated as follows: seventy-five percent (75%) as wages; and twenty-five percent (25%) as penalties
14 and interest. The Settlement Administrator will be responsible for issuing to participating Settlement
15 Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts
16 allocated as penalties and interest. *See* Lidman Decl., ¶ 13, Exh. 1 (Settlement ¶ 5.E).

17 **G.3.k. Notice Packet Is Likely To Be Readily Understood By Settlement Class**

18 The Notice Packet will be mailed in both Spanish and English. *See generally* Lawrence Decl.
19 and attached exhibits. Here, many of the Settlement Class members understand and can read and write
20 in English, but several prefer to communicate in Spanish and some do not write or read English. *See*
21 Declaration of Kendra Sage of GLP Services LLC, ¶ 3. Therefore, mailing the Notice Packet in both
22 Spanish and English will likely be understood by the Settlement Class.

23 Moreover, the content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
24 because it advises Settlement Class members of the nature of the claims, basic contentions and denials
25 of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object to the
26 Settlement and the procedures by which to do so, explains the recovery formula and expected recovery
27 amount for each Settlement Class member, provides them the opportunity to contest their total
28 workweeks/total pay periods included in the notice, and advises them that they will be bound by the

⁸ Pursuant to the terms of the Settlement, class members do not need to submit a claim form. Also, GLP will have the option of voiding the Settlement if 10% or more of the Settlement Class opts out of the Settlement. *See* Nguyen Decl., ¶ 13, Exh. 1 (Settlement ¶ 11).

1 terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 1 (Settlement, Exhs. B- E). The
2 proposed Notice Packet will also notify Settlement Class members of the final approval hearing date
3 and provides Settlement Class members the contact information for Class Counsel, and advises
4 Settlement Class members that they may enter an appearance through counsel if they wish to. The
5 proposed Notice Packet shall also include a toll free 800 number to contact PSA should they have any
6 questions and PSA has representatives who are fluent in both English and/or Spanish. This manner of
7 giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
8 of reaching Settlement Class members.

9 **G.5. THE PROPOSED NOTICE**

10 **G.5.a. Likely Recovery**

11 The proposed class notice includes an estimate of the average recovery by the individual
12 Settlement Class members and also includes an estimate of the range of possible recoveries. *See* Exhibit
13 B to the Proposed Order Granting Preliminary Approval of Class Action Settlement (“Proposed Order”),
at page 4.

14 **G.5.b. Avoid Discouraging Any Dissenting Settlement Class Members**

15 The proposed notice clearly indicates that the Court has determined only that there is sufficient
16 evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any
17 final determination of those issues will be made at the final hearing. *See* Exhibit A to the Proposed
Order, at page 2.

18 **G.5.c. Advisement to Settlement Class members**

19 The proposed notice advises the Settlement Class members of where they can find the settlement
20 agreement by describing where they can access the electronic case file online and specifically locating
21 “Compendium of Declarations Filed Concurrently with Plaintiff’s Motion for Preliminary Approval
22 Filed” and locating the Declaration of Elizabeth Nguyen. *See* Exhibit B to the Proposed Order, at page
23 7.

24 **G.5.d. Claims Administrator**

25 Neither the notice nor the documents enclosed with it describes the Settlement Administrator as
26 the “claims administrator” as the Settlement Class members are not required to submit claims. *See*
Exhibit A to the Proposed Order.

27 **G.5.e. Release by the Settlement Class Members**

28 The Class Notice expressly states the following,

Release. If the Court approves the Settlement, the Settlement Class, and each
Settlement Class member who has not submitted a timely and valid Request for
Exclusion, will release GLP, Greenleaf Power, LLC and all of their past and

present officers, directors, employees, and agents (collectively the “Released Parties”), from all claims, demands, rights, liabilities and causes of action that were pled in any of the Complaints in the Action, or which could have been pled in any of the Complaints in the Action based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-complaint rest periods; (e) failure to timely pay wages upon termination of employment; and (f) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Claims”). The time period of the Settlement Class Members’ Release shall be the same time period as the Class Period.

Release of PAGA. Plaintiff on behalf of himself and the State of California, will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 for penalties that could have been sought by the California Labor Commissioner against the Released Parties as alleged in Plaintiff’s April 8, 2021 letter to the LWDA and to the extent alleged in the operative complaint in the Lawsuit based on the: the (a) failure to pay all minimum wages owed; (b) failure to pay overtime wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; and (e) failure to timely pay all wages due upon separation of employment that occurred during the PAGA Period (collectively, “PAGA Released Claim”). The release on behalf of the State of California will extinguish any and all claims for penalties that the State of California could have brought on behalf of the PAGA Employees, and that the PAGA Employees therefore will, after judgment is entered in this Action following final approval of the Settlement, be barred by the doctrines of res judicata and/or claim preclusion from pursuing PAGA penalties with respect to the claims at issue in the in the operative complaint and as alleged in Plaintiff’s April 8, 2021 letter to the LWDA, whether brought on an individual, representative, or collective basis.

See Exhibit A to the Proposed Order at pages 4-5.

G.5.f. Advisement of PAGA Settlement

The Class Notice expressly states the following,

Plaintiff and Settlement Class members who were employed by GLP in California at any time from April 8, 2017 through [insert end date of Class Period], will not have the opportunity to opt out or object to the PAGA Amount, as described below in section 4.C.5, and/or opt-out or object to the PAGA Released Claim, although the release of PAGA claims will be subject to Court approval.

See Exhibit A to the Proposed Order at page 5.

G.6. THE PROPOSED CLAIM FORM

The Settlement Class members do not have to submit any claim form to receive their individual settlement payment from this settlement.

G.7. THE PROPOSED OBJECTION FORM

G.7.a. Instruction to Objecting Settlement Class Member

The objection form instructs objecting Settlement Class members to mail their objection to Phoenix Settlement Administrator and will include the address and the date by which the objection must be mailed or otherwise delivered. *See Exhibit D to the Proposed Order at page 1.*

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G.7.b. Required Information

The proposed objection form only requires sufficient information to: (i) identify the objector as a person entitled to object to the settlement, (ii) describe the nature of and basis for the objection, and (iii) contact information to clarify any uncertainties. *See* Exhibit D to the Proposed Order at page 1.

G.8. THE PROPOSED EXCLUSION FORM

G.8.a. Instruction to Settlement Class Member Seeking Exclusion

The proposed exclusion form instructs Settlement Class members seeking exclusion to mail their exclusion to Phoenix Settlement Administrator and will include the address and the date by which the exclusion must be mailed or otherwise delivered. *See* Exhibit C to the Proposed Order at page 1.

G.8.b. Required Information

The proposed exclusion form does not exceed the minimum information necessary to (i) identify the person as a Settlement Class member and (ii) contact information to clarify any uncertainties. *See* Exhibit C to the Proposed Order at page 1.

G.8.c. No Exclusion From PAGA Settlement

The proposed exclusion form indicates that exclusion from the class settlement will not result in exclusion from any PAGA settlement. *See* Exhibit C to the Proposed Order at page 1.

G.9. PAGA PENALTIES

G.9.a. Terms Of PAGA Settlement

The parties have agreed to a PAGA award of \$50,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or \$37,500.00. Lidman Decl., ¶ 13, Exh 1 (Settlement ¶ 4.C.5). The remaining twenty-five percent (25%), or \$12,500.00, will be payable to certain Settlement Class members as the “PAGA Amount.”

The PAGA Amount will be allocated as follows: Each Settlement Class Member (including those who opt-out) who was employed by Defendant at any time during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked as a non-exempt employee during this time period. Each PAGA Employee who worked during this time period shall receive a portion of the PAGA Amount, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of workweeks worked as a non-exempt, hourly employee during the PAGA Period, and the denominator of which is the total number of workweeks worked by all PAGA Employees as non-exempt, hourly employees during the PAGA Period.

1 Plaintiff and all Settlement Class Members who were employed by GLP in California at any time
2 from July 23, 2019 through the date of preliminary approval (or the earlier date if Defendant exercises
3 its right under Paragraph 4.D. to shorten the PAGA Period), will not have the opportunity to opt out or
4 object to the PAGA Amount or opt-out of the release of the PAGA claim, although the release of PAGA
5 claim will be subject to Court approval.

6 **G.9.b. Calculation Of Penalties**

7 In section G.3.a.ii of the instant motion, Plaintiff describes (i) the nature of the alleged
8 violations; (ii) the number of alleged individual violations, including both the length of the relevant
9 employment period and the number of employees allegedly employed during that period; and (iii) the
10 total amount of penalties for which GLP is potentially liable were those allegations to be proven.

11 **G.9.c. PAGA Penalties Are Less Than The Statutory Maximum**

12 The parties have agreed to a PAGA award of \$50,000.00 and in accordance with California
13 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
14 – or \$37,500.00. Lidman Decl., ¶ 13, Exh 1 (Settlement ¶ 4.C.5). This \$37,500 represents roughly 4.7%
15 of the \$800,000.00 Gross Settlement Amount and is in line with the zero to two percent range for PAGA
16 claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx),
17 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or
18 \$20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr.
19 13, 2009) (approving a PAGA settlement of 0.3 percent, or \$1,500); *Nordstrom*
20 *Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
claims and PAGA claims under which no money was allocated to the PAGA claims).

21 Further, neither the Court nor a jury has made a factual finding of a violation of any Labor Code
22 such that approving an amount that is less than the statutory maximum is appropriate. Lidman Decl., ¶
23 29. As discussed above at Sections G.3.a.ii and G.3.a.iii (and without waiving the mediation privileges
24 and confidentiality agreements), the Parties specifically negotiated, like the other terms of the
25 settlement, and ultimately agreed to resolve the PAGA claim for \$50,000.00 at mediation. *Id.* at ¶ 29.

26 As discussed above, Plaintiff estimated a realistic exposure of \$126,682.50 for the PAGA claim.
27 As such, Plaintiff submits that settling the PAGA claim for \$50,000.00 represents about 39% of the
28 estimated exposure and is reasonable based on the associated risks discussed above, including that a
court ultimately has discretion to reduce the amount of PAGA penalties awarded at trial.

1 Approval of less than the statutory maximum is appropriate in this case because GLP expressly
2 denies and continues to deny any liability. Settlement, ¶ 13.

3 **III. ADEQUACY, COMMONALITY, AND TYPICALITY ARE SATISFIED**

4 Settlement Class Members' claims arise from GLP's common, uniform wage and hour policies
5 and practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 15.
6 The typicality requirement is satisfied where class representatives have claims that are typical of those
7 of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341,
8 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class
9 in a consumer class action). Here, Plaintiff's claims are typical of those held by the members of the
10 proposed Settlement Class. First, Plaintiff was employed by GLP during the Class Period as a non-
11 exempt employee and was subject to GLP's wage and hour policies at issue in this case. *See Celaya*
12 *Decl.*, ¶ 2. Second, Plaintiff was injured by the same challenged policies that injured the Settlement
13 Class as a whole. Given that GLP's policies and practices applied to all non-exempt employees,
14 Settlement Class members possess a similar interest and have suffered similar alleged injuries as
15 Plaintiff. Accordingly, because Plaintiff's claims and those of the Settlement Class all arise from the
16 same conduct, typicality and commonality are satisfied.

17 The adequacy requirement examines conflicts of interest between named parties and the class(es)
18 they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007)
19 Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
20 Settlement Class he seeks to represent. Indeed, Plaintiff's interests are aligned with those of the
21 Settlement Class members, as they all seek monetary relief under the same facts and legal theories.
22 Plaintiff, a former employee, is an adequate class representative because he: (i) contends in the action
23 that he has suffered the same Labor Code violations as the class members, (ii) has been involved in
24 prosecuting this case since its inception, (iii) understands he took a risk on behalf of the other former
25 and current employees by filing a lawsuit that could result in him paying GLP's costs if he lost the case,
26 (iv) accepted these risks because he wanted GLP to compensate the current and former employees for all
27 unpaid wages, (v) does not have any conflicts with any of the class members, and (vi) his interests are
28 aligned with those of the class because he seeks to help both former and current employees of GLP
recover their unpaid wages and penalties. *See Celaya Decl.*, ¶¶ 2-12. Therefore, that Plaintiff is able to

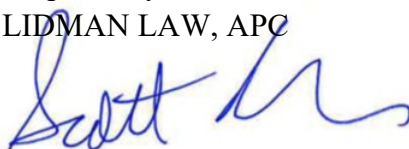
adequately represent the class members and his interests do not conflict with the class members he seeks to represent. (*Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal. App. 4th 676, 697 [adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent; see also *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 [adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class].)

Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. See *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Settlement Class members must file objections to the Settlement or opt-out, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: September 15, 2022

Respectfully submitted,
LIDMAN LAW, APC

By: _____
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JOSE CELAYA