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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA
10

11 NAJEE SLADE, on behalf of himself and all
12 others similarly situated,

13 *Plaintiff,*

14 vs.

15 GEODIS LOGISTICS, LLC, a Tennessee
16 corporation; GEODIS USA, LLC, a
Pennsylvania corporation; and DOES 1
through 50, inclusive,

17 *Defendants.*
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20
21

Case No. 21CV387276

Assigned for all purposes to the Honorable
Patricia M. Lucas, Department 3

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

*[Filed concurrently with Declaration of Shaun
Setareh in support thereof]*

Date: May 25, 2022
Time: 1:30 p.m.
Place: Department 3

Complaint Filed: June 10, 2021
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1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 25, 2022 at 1:30 p.m., or as soon thereafter as the matter
3 may be heard in Department 3 of the above-entitled Court located at 191 N First St, San Jose, CA 95113,
4 Plaintiff NAJEE SLADE (“Plaintiff”) will and does hereby move this Court for an Order:

- 5 • Preliminarily approving the proposed Stipulation of Class and Representative Action
6 Settlement;
- 7 • Certifying the Settlement Class;
- 8 • Appointing Plaintiff as the Class Representative;
- 9 • Appointing Shaun Setareh and David Keledjian of Setareh Law Group as Class Counsel;
- 10 • Appointing Simpluris, Inc. as the Settlement Administrator;
- 11 • Directing that notice be mailed to the Settlement Class; and
- 12 • Scheduling a hearing date for the Motion for Final Approval of Class Action Settlement.

13 This motion is made pursuant to California Rules of Court 3.769. This motion will be based
14 upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the
15 Declaration of Shaun Setareh as well as exhibits attached thereto, the arguments of counsel, the
16 documents filed in this action and any other matters as may be properly presented on or before the
17 hearing on this motion.

18
19 DATED: February 3, 2022

SETAREH LAW GROUP

20
21
22 SHAUN SETAREH
23 DAVID KELEDJIAN
24 Attorneys for Plaintiff
25 NAJEE SLADE
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NAJEE SLADE (“Plaintiff”) seeks preliminary approval of a non-reversionary class and
4 representative action settlement of wage and hour and PAGA penalty claims against Defendants GEODIS
5 LOGISTICS, LLC, and GEODIS USA, LLC (collectively, “Defendants”)¹ for a Gross Settlement Amount
6 (“GSA”) of **\$887,360.00**. The Settlement Class consists of approximately 10,121 Class Members who
7 have worked approximately 94,000 workweeks.

8 The estimated Net Settlement Amount (“NSA”) expected to be paid to Class Members—after
9 payment of Class Counsel fees of one-third (1/3) of the GSA (\$295,786.66) and costs of up to \$25,000,
10 settlement administration costs of up to \$60,000, Plaintiff’s enhancement award of \$10,000, and a payment
11 to the California Labor & Workforce Development Agency (“LWDA”) pursuant to the Private Attorneys
12 General Act of 2004 (“PAGA”) of \$ 37,500.00 (75% of the total PAGA Settlement Amount of \$50,000)
13 —is \$459,073.34 (which includes the 25% portion of the PAGA Settlement Amount, or \$12,500, that will
14 be paid to PAGA Employees employed during the PAGA period), with an average individual settlement
15 payment to each Class Member of approximately \$45.63. Plaintiff has obtained a significant monetary
16 recovery for Class Members.

17 The Settlement occurred as a result of extensive, arm’s-length negotiations by experienced counsel
18 after sufficient formal and informal written discovery and investigation into the facts with guidance of
19 Hon. Margaret Nagle, a retired judge and experienced and well-respected mediator. The Settlement seeks
20 to fully and finally settle and resolve all claims that were pled or could have been pled based on the
21 allegations in the operative Complaint (“FAC”) individually and on behalf of all Class Members of three
22 separate Classes: (1) any and all hourly non-exempt employees employed directly by Defendants in
23 California from January 1, 2021 through December 31, 2021 (the “Employee Class Period”); (2) all
24 temporary workers working for Defendants through third party agencies in California from June 1, 2020
25 through December 31, 2021 (the “Temp. Worker Class Period”); and (3) non-exempt employees employed
26

27 ¹ The Parties executed a Joint Stipulation of Class Action Settlement (“Settlement”), attached as
28 **Exhibit 1** to the Declaration of Shaun Setareh filed concurrently herewith.

1 directly by Defendants in California between April 17, 2019 and December 31, 2020 and temporary
2 workers working for Defendants through third party agencies in California between April 17, 2019 and
3 May 31, 2020 (the “2802 Class Period”) (all three classes collectively, “the Settlement Class”). The
4 Settlement will result in financial benefit to the class members on terms that are fair, reasonable, and
5 adequate.

6 Based upon their evaluation, Plaintiff and his counsel, Shaun Setareh and David Keledjian of the
7 Setareh Law Group, have determined that the Settlement is fair, reasonable, adequate and in the best
8 interest of the Settlement Class, and they request that this Court grant preliminary approval of the
9 Settlement.

10 **II. THE MAJOR TERMS OF SETTLEMENT**

11 Key provisions of the proposed settlement include the following:

- 12 • Defendants stipulate to certification of three Classes for purposes of settlement only.
- 13 • Defendants will pay a maximum of **\$887,360.00**, referred to as the GSA.
- 14 • Defendants will not oppose Class Counsel’s application for fees of 1/3 of the GSA (**\$295,786.66**)
15 and costs not to exceed **\$25,000**, to be paid out of the GSA.
- 16 • The notice portion of the Settlement will be administered by Simpluris, Inc. (“Simpluris”),
17 whose costs are not expected not to exceed **\$60,000** (based upon Simpluris’s actual capped price
18 quote of \$55,000) to administer the Settlement per its terms.
- 19 • Out of the GSA, **\$50,000** is allocated to resolve the PAGA claims, with 75%, i.e., **\$37,500**, to be
20 paid by the Settlement Administrator to the LWDA, and 25%, i.e., **\$12,500**, to be paid to PAGA
21 Employees – i.e., Class Members employed at any time during the PAGA Period.
- 22 • Defendants will not oppose the application for Class Representative Payment in the amount of
23 **\$10,000** to Plaintiff, to be paid out of the GSA.
- 24 • After deducting Class Counsel’s attorneys’ fees and costs, enhancement payment to Plaintiff,
25 settlement administration costs, the payment to the LWDA, and payroll taxes, the remainder – i.e.,
26 the NSA – is calculated to be at least **\$459,073.34**. Each Participating Class Member will receive
27 a *pro rata* share based upon the number of weeks worked during their respective Class Period
28 and/or the number of pay periods worked during the PAGA Period.

- Settlement Class Members will be mailed a check so long as they do not opt out.
- The Settlement will release specified wage-and-hour claims for those Settlement Class Members who do not opt out of the Settlement.
- The Settlement will release specified PAGA claims for all Class Members who were employed with Defendants during the PAGA Period. Such Class Members cannot opt out of the PAGA portion of the Settlement and will be mailed their share of the PAGA Payment even if they opt out of the rest of the Settlement.
- Any checks issued by the Settlement Administrator to Participating Class Members will be negotiable for not less than 180 calendar days after mailing. Those checks remaining uncashed for more than 180 days after issuance will be reissued sent to a cy pres recipient approved by this Court.

(Declaration of Shaun Setareh (“Setareh Decl.”), Ex. 1 (“Settlement”).)

III. STATEMENT OF FACTS

A. THE PARTIES

Defendants are a worldwide transport and logistics leader, offering freight forwarding, supply chain optimization, contract logistics, and transportation management. (Setareh Decl., ¶ 18.) Plaintiff began working for Defendants as a non-exempt hourly employee in June of 2017 and last worked on April 12, 2021. (*Id.*)

Plaintiff alleges that Defendants failed to provide him and other class members with timely and legally compliant meal and rest periods as required by California law. (FAC, ¶¶ 35-60.) For instance, Plaintiff alleges that he and other class members were required to perform work during meal and rest breaks due to excessive workloads and undergo mandatory security checks which prevented them from taking uninterrupted meal and rest breaks. (FAC, ¶¶ 22-27.) Plaintiff also alleges that the work during meal breaks and time spent in mandatory security checks, also denied him and other class members proper minimum and overtime wages, as well as other derivative claims under the California Labor Code. (*Id.*)

Plaintiff also alleges that he and other class members were not reimbursed for all of their necessary business expenses including, but not limited to, reimbursement for protective face masks in the workplace and use of personal cell phones for work related purposes. (FAC, ¶¶ 34, 98-102.)

1 Lastly, Plaintiff alleges that because of the above violations, he and other class members were not
2 paid all final wages upon termination, Defendants did not provide accurate written wage statements, and
3 Defendants violated California’s Business and Professions Code section 17200. (FAC, ¶¶ 81-97, 103-122.)
4 Plaintiff also seeks to recover penalties on behalf of the LWDA pursuant to PAGA. (*Id.*, ¶¶ 123- 128.)

5 **B. PROCEDURAL HISTORY**

6 On October 14, 2020, Plaintiff gave notice to LWDA in advance of seeking penalties under the
7 California Private Attorney General Act, Labor Code § 2699, et seq., (“PAGA”). (Settlement, ¶ A.) On
8 December 16, 2021, Plaintiff filed an amended PAGA notice with the LWDA adding claims for violations
9 of Labor Code section 2802. (*Id.*)

10 On June 10, 2021, Plaintiff filed a class action complaint in the Santa Clara County Superior Court,
11 Case No. 21CV382880, alleging six causes of action: (1) Failure to provide meal periods, (2) failure to
12 provide rest periods, (3) failure to pay hourly wages and overtime, (4) failure to provide accurate written
13 wage statements, (5) failure to timely pay all final wages, and (6) violation of California’s Unfair
14 Competition law (the “First Action Complaint”) (the action referred to as the “First Action”). (Settlement,
15 ¶ A; *See generally*, First Action Complaint.) On July 14, 2021, Defendant removed the First Action to the
16 United States District Court for the Northern District of California, Case No: 5:21-cv-05390-BLF. (*Id.*, ¶
17 1(i).)

18 On September 30, 2021, Plaintiff filed this second suit in the Santa Clara County Superior Court,
19 Case No. 21CV87276, alleging PAGA penalties based on the violations alleged in the First Action (the
20 “Second Action Complaint”) (the action referred to as the “Second Action”). (Settlement, ¶ A; *See*
21 *generally*, Second Action Complaint.)

22 The Parties agreed to mediate Plaintiff’s alleged wage and hour and PAGA claims from both, the
23 First and Second Actions, and selected the Hon. Margaret Nagle (Ret.), to serve as mediator. (Settlement,
24 ¶ D.) On December 3, 2021, the Parties attended mediation with Judge Nagle and were able to reach an
25 agreement on a class-wide and representative settlement. (*Id.*)

26 On January 26, 2022, Plaintiff dismissed the First Action without prejudice. Subsequently, on
27 March 11, 2022, Plaintiff filed an amended complaint in the Second Action, adding all of the dismissed
28 claims from the First Action plus an additional claim for failure to indemnify. (*See generally*, FAC.)

1 **C. INVESTIGATION AND DISCOVERY**

2 The Parties agreed to attend mediation to attempt to resolve the action entirely and further agreed
3 to engage in informal discovery in advance and in preparation thereof. (Setareh Decl., ¶ 6.) Defendants
4 produced over 700,000 lines of time and pay data for class members, as well as relevant written policies
5 for the claims at issue. (*Id.*) These records allowed Plaintiff to calculate average pay rate among the Class
6 Members, as well as analyze the potential liability of Defendants for the alleged claims. (*Id.*) Plaintiff hired
7 an expert to hire analyze the produced data with respect to potential damages and penalties in preparation
8 for mediation. (*Id.*)

9 **D. SETTLEMENT NEGOTIATIONS AND SETTLEMENT**

10 On December 3, 2021, the Parties participated in a full-day mediation before experienced mediator
11 Hon. Margaret Nagle (Ret.), which lasted nearly eleven hours. (Settlement, ¶ D.) During the mediation,
12 the Parties had a full day of productive negotiations and were able to reach an agreement on a class-wide
13 and representative settlement as a result of the arm's length negotiations. (*Id.*) During the mediation, each
14 of the Parties, represented by its respective counsel, recognized the risk of an adverse result in the Action.
15 (*Id.*)

16 **E. REASONABLENESS OF THE SETTLEMENT**

17 Plaintiff's counsel believe that the Settlement is in the best interest of the class members based on
18 their investigation and discovery, their detailed understanding of the issues raised, and the outcome of
19 extensive settlement negotiations. (Settlement ¶ E.) Plaintiff's counsel balanced the Settlement against
20 the probable outcome of class certification, liability, the range of recovery at trial, the risks of losing class
21 certification, losing at trial, or not recovering as much as provided by the proposed Settlement, as well as
22 the difficulties and complexity of the litigation, the lengthy process of litigating to judgment, and the
23 various possible delays and appeals. (*Id.*) Although Defendants contend they have no liability in this case,
24 Defendants' counsel share Plaintiff's counsel's belief that the Agreement represents a fair, reasonable and
25 adequate settlement given the respective risks associated with the Action. (Settlement, ¶ E.)

26 ///

27 ///

1 **IV. DESCRIPTION OF THE SETTLEMENT**

2 **A. CONTINGENT NATURE OF THE SETTLEMENT**

3 If the Court ultimately does not grant final approval of the Settlement or grants final approval
4 conditioned on any material change to the Settlement that is not agreed to by the Parties, then either Party
5 will have the unilateral right to void the Settlement in its entirety by providing written notice of such
6 termination to the other Party and to the Court within ten (10) days of the Court's ruling on the Settlement.
7 (Settlement, ¶ 45.)

8 Defendants have agreed not to contest the certification of the Class for the sole purpose of
9 effectuating this Settlement. (Settlement, ¶ 58.) Should the Settlement be voided by any Party pursuant to
10 this Agreement, or not approved by the Court, or should the Judgment not become Final, the certification
11 of the Class for settlement purposes will be deemed null and void; and the fact that Defendants were willing
12 not to contest class certification as part of the Settlement will have no bearing on, and will not be admissible
13 in connection with, the issue of whether the Class should be certified in a non-settlement context in the
14 Action or any other action. (*Id.*)

15 **B. APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

16 The Parties have stipulated to the appointment of Shaun Setareh, David Keledjian of Setareh Law
17 Group as Settlement Class Counsel ("Class Counsel"). (*Id.*, ¶ 10.)

18 **C. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

19 The Parties have agreed to the appointment of Simpluris to administer the Settlement and to
20 provide notice to the Class Members (the "Settlement Administrator" or "Claims Administrator").
21 (Setareh Decl., ¶ 16.) Plaintiff estimates that settlement administration costs will not exceed \$60,000 for
22 the estimated 10,121 class members. (*Id.*)

23 **D. DESCRIPTION OF THE SETTLEMENT CLASS**

24 The Settlement Class is a collective of three Classes: Employee Class, Temp. Worker Class, and
25 2802 Class. (Settlement, ¶ 5.)

- 26 • **The Employee Class** means any and all hourly non-exempt employees employed directly
27 by Defendants in California from January 1, 2021 through December 31, 2021.
28

(Settlement, ¶ 5(i).)

- **The Temp. Worker Class** means all temporary workers working for Defendants through third party agencies in California from June 1, 2020 through December 31, 2021. (*Id.*, ¶ 5(ii).)
- **The 2802 Class** means non-exempt employees employed directly by Defendants in California between April 17, 2019 and December 31, 2020, and temporary workers working for Defendants through third party agencies in California between April 17, 2019 and May 31, 2020. (*Id.*, ¶ 5(iii).)

Defendant estimates that as of December 31, 2021, there were approximately 94,000 workweeks worked by members of the Employee Class and Temp. Worker Class. (*Id.*, ¶ 23.) If the number of workweeks as of that date is more than 10% greater, the GSA will rise in proportion to the increase above 10%. (*Id.*)

A PAGA Employee is a Class Member who was employed from June 10, 2020 through December 31, 2021 as a Temp. Worker Class Members and January 1, 2021 to December 31, 2021 as an Employee Class Members (the PAGA Period). (*Id.*, ¶¶ 7--8.)

E. SCOPE OF THE RELEASE

Release of Claims by Participating Class Members. Upon the entry of an order by the Court granting final approval of this Settlement, and except as to such rights or claims as may be created by this Agreement, the Settlement Class (including Plaintiff) and each Participating Class Member who has not properly submitted a timely and valid request to “opt-out” or be excluded from the Action, and without the need to manually sign a release document, in exchange for the consideration recited in this Agreement (whether later received or not), on behalf of himself or herself and on behalf of his/her current, former, and future heirs, executors, administrators, attorneys, agents, successors and assigns, shall hereby fully, finally and forever waive, release, relinquish and discharge Defendants and each of their past and current parents, subsidiaries, affiliates, trusts, trust funds, investors and related entities or companies, and each of its and their respective owners, partners, members, shareholders, officers, directors, employees, agents, managing agents, attorneys, representatives, fiduciaries, trustees, insurers, temporary agencies, and other service providers, and their respective predecessors, successors, and assigns (collectively hereinafter the

1 “Releasees”), for all wage and hour claims that were alleged or could have been alleged based on the same
2 facts in the Actions filed by Slade including claims for failure to pay minimum wage, failure to pay
3 overtime, failure to provide meal periods, failure to provide rest periods, failure to provide complete and
4 accurate wage statements, failure to timely pay all earned wages, waiting time penalties, failure to
5 reimburse business expenses, unfair business practices, and violations of the California Private Attorneys
6 General Act of 2004 predicated on the same facts and/or claims alleged in the Actions, as well as claims
7 for penalties under the Private Attorneys General Act, based on such facts and claims. All federal
8 claims that could have been alleged based on the same facts in the Actions, including but not limited
9 to claims under the Fair Labor Standards Act (the “FLSA”), shall likewise be released, and shall be
10 barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of*
11 *Cal., Inc.* 889 F.3d 1106 (9th Cir. 2018). The claims set forth in this Paragraph hereinabove shall be
12 collectively referred to as the "Released Claims." (*Id.*, ¶ 24.)

13 Even though claims under the FLSA were not pled, Class Members are releasing claims arising
14 under the FLSA for the same alleged conduct by Defendants in this settlement. (*Id.*) This is appropriate as
15 such FLSA claims would be entirely subsumed by the broader California wage and hour claims and a
16 double recovery for the same violations under the FLSA would not be permitted. (*Id.*) (See *Rangel v. PLS*
17 *Check Cashers of Cal., Inc.* 889 F.3d 1106 (9th Cir. 2018).

18 In order to cash their individual settlement award checks, Participating Class Members will be
19 required to affirmatively opt-in for purposes of the Fair Labor Standards Act (“FLSA”) and waive all
20 Released Class Claims falling under the FLSA by endorsing their individual settlement award checks,
21 which shall contain thereon the following or substantially similar language: “By endorsing and cashing
22 this check, I agree to the waiver of the wage and hour claims set forth in the class notice in *Slade v. Geodis*
23 *Logistics, LLC*, et al., Case No.: 21CV387276, including all claims under the FLSA based upon the facts
24 alleged in the Action, and hereby affirmatively opt in to the FLSA claim and FLSA waiver for purposes
25 of 29 USC section 216(b).” (Settlement, ¶ 52(i).) This FLSA release will not apply to Class Members who
26 timely submit a valid Request for Exclusion from the settlement class, and this language will not appear
27 on the checks provided to such an employee for his or her share of the PAGA Settlement Amount. (*Id.*)

28 Release of PAGA claims by Plaintiff and PAGA Employees. Plaintiff, in his capacity as proxy

1 for the State of California and/or the LWDA, and as a private attorney general acting on behalf of himself
2 and the PAGA Employees, and each of the PAGA Employees, shall be deemed to have, and by operation
3 of the Order of Final Approval of Settlement and Judgment entered by the Court shall have, fully, finally
4 and forever released, relinquished and discharged the Releasees from all claims arising during the PAGA
5 Period seeking civil penalties under the Private Attorneys General Act, California Labor Code section
6 2698, et seq., that Plaintiff in his capacity as proxy for the State of California and/or the LWDA, to the
7 maximum extent permitted by law, and as a private attorney general acting on behalf of himself and the
8 PAGA Employees, asserted or could reasonably have asserted based on the facts alleged in the Action, the
9 LWDA letter, and/or the Amended LWDA letter, including but not limited to all such claims arising under
10 the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210, 212, 215,
11 216, 218.6, 223, 225, 226, 226.6, 226.7, 354, 408, 510, 512, 553, 558, 1175, 1194, 1194.2, 1197, 1197.1,
12 1198, 1199, 2802, 2698 and 2699, et seq., as alleged in the Complaint) and the wage orders of the
13 California Industrial Welfare Commission and any other Labor Code section or Wage Order based on the
14 facts alleged in the Action. Collectively, these claims shall be referred to as the “PAGA Released Claims.”
15 This release shall release all PAGA Released Claims by or on behalf of Plaintiff and all PAGA Employees
16 through the end of the PAGA Period and for the entire PAGA Period regardless of whether Plaintiff and/or
17 a PAGA Employee negotiates their/his/her settlement checks sent pursuant to this Settlement and
18 regardless of whether any such PAGA Employee opts out and excludes himself or herself from the
19 Settlement. (Settlement, ¶ 35.) PAGA employees shall have no right to object to the PAGA Release, the
20 PAGA Settlement Amount or the PAGA Shares. (*Id.*)

21 General Release of Claims by Plaintiff. Upon the Effective Date, Plaintiff will be subject to a
22 general release including a waiver of Civil Code Section 1542. (*Id.*, ¶¶ 26-27.)

23 **F. SETTLEMENT AMOUNT AND ALLOCATION OF SETTLEMENT MONIES**

24 The Settlement provides for a GSA of **\$887,360**. (*Id.*, ¶ 18.) The GSA is the maximum total amount
25 that Defendants will be required to pay for all claims of the Plaintiff and Class Members that are alleged,
26 and includes. (*Id.*) Enhancement payment to the Class Representative, all amounts payable to the Labor
27 and Workforce Development Agency (“LWDA”) and the PAGA Employees as PAGA penalties, all
28 Court-approved attorneys’ fees of Class Counsel, all Court-approved costs and expenses incurred or

1 advanced by Class Counsel related to the Action, the fees and costs of the Claims Administrator. (*Id.*) The
2 GSA does not include the employer's share of payroll taxes on the wage portion of the individual
3 settlement payments distributed to the Class Members. (*Id.*) This is a non-reversionary settlement and
4 none of the GSA will revert to Defendants, with the funds of checks uncashed by Class Members after
5 180 days of their mailing being directed to the California State Controller's Unclaimed Property Fund.
6 (*Id.*, ¶¶ 18, 53.)

7 **G. CLASS MEMBER SETTLEMENT PAYMENT FORMULA**

8 The Parties have agreed to a settlement formula which allocates settlement amounts to Class
9 Members on a *pro rata* basis, based on their number of workweeks and pay periods during the Employee
10 Class, Temp Class, and PAGA Periods. (*Id.*, ¶¶ 20(B)-(C).) As for the settlement funds allocated to the
11 release of the alleged claims under Section 2802 (for alleged unreimbursed expenses), each 2802 Class
12 Member shall receive \$1.00 for each pay period during the applicable 2802 Class Period. (Settlement, ¶
13 20(D).) Individual Settlement Payments – the individual amount paid to a Participating Class Member
14 from the NSA – is allocated 1/3 to wages (for which employment taxes will be deducted and IRS Forms
15 W-2 issued), and 2/3 as penalties and interest (for which no taxes will be deducted and IRS Forms 1099
16 will be issued). (*Id.*, ¶ 20(A).) The amount paid to aggrieved employees from the \$12,500.00 PAGA
17 portion of the NSA – will be allocated 100% to penalties (for which IRS Forms 1099 will be issued). (*Id.*)

18 **1. Calculation of the Individual Settlement Payment and the PAGA Payment to** 19 **the Settlement and Aggrieved Employees**

20 Within 30 days of Preliminary Approval, Defendants will provide the Claims Administrator a
21 confidential and password-protected electronic database with the full names of all Class Members, last
22 known mailing address, Social Security number and Defendants' employee identification number ("Class
23 Members' Data"). (*Id.*, ¶34(A).) The Class Members' Data will provide a figure indicating the total
24 number of Work Weeks during the applicable Class Period in which that Class Member performed any
25 work for Defendants as an hourly, non-exempt employee ("Individual Work Weeks"), the total number of
26 payroll periods during the PAGA Period that each PAGA Employee received a paycheck, and the total
27 pay periods that each 2802 Class member worked. (*Id.*, ¶ 34(B).) The Settlement Administrator will first
28 deduct the 2802 Shares from the NSA. (*Id.*, ¶ 20(B).) Once the 2802 Shares are deducted, the remaining

1 NSA will be distributed as PAGA and Settlement Shares. (*Id.*)

2 **(a) 2802 Share Calculation**

3 To each Class Member, the Settlement Administrator will assign \$1.00 for each pay period
4 that a 2802 Class Member worked during the 2802 Class Period. (*Id.*, ¶ 20(D).)

5 **(b) Settlement Shares to the Participating Class Members**

6 The Settlement Administrator will first calculate each Class Member's Settlement Ratio by
7 dividing that Participating Employee Class Member's and Temp. Worker Class Members' Individual
8 Work Weeks during the Class Period by the aggregate total of all Participating Employee Class Members'
9 and Temp. Worker Class Members' Individual Work Weeks during the Class Period. (*Id.*, ¶ 20(B).)

10 **(c) PAGA Settlement Amount, Payment to the LWDA, PAGA Shares**

11 The Parties agree to allocate **\$50,000** of the GSA for settlement of claims for civil penalties under
12 PAGA, Labor Code § 2699, *et seq.* (the "PAGA Settlement Amount") (*Id.*, ¶ 19(E).) Pursuant to Labor
13 Code section 2699(i), 75% of that amount (**\$37,500**) will be paid to the LWDA. (*Id.*) The remaining 25%
14 (**\$12,500**) will be distributed to PAGA Employees on a *pro rata* basis according to the number of pay
15 periods they worked during the PAGA Period (the "PAGA Share"). (*Id.*, ¶¶ 19(E), 20(C).)

16 **H. NOTICE TO CLASS MEMBERS OF SETTLEMENT**

17 The proposed Notice of Class Action Settlement ("Class Notice" or "Notice Packet") (attached as
18 **Exhibit 1** to the Settlement) provides Class Members with all required information so that each member
19 may make an informed decision regarding his or her participation in the Settlement. The Class Notice
20 provides information regarding the nature of the lawsuit, a summary of the substance of the settlement
21 terms, the class definition, the deadlines by which Class Members must request exclusion or submit
22 objections, the date for the final approval hearing, the formula used to calculate settlement payments, a
23 statement that the Court has preliminarily approved the Settlement, and a statement that the Class Members
24 will release the settled claims unless they opt out. The Class Notice will include an individualized
25 computation of the approximate amount of the individual settlement award that the particular Class
26 Member will receive from the settlement proceeds and how that amount was calculated.

27 Within 30 calendar days of Preliminary Approval, Defendants will provide the Class Members'
28 Data to the Claims Administrator. (*Id.*, ¶ 34.) The Class Members' Data will be a confidential and

1 password protected electronic database with the full names of all Class Members, last known mailing
2 address, Social Security number, Defendants' employee identification number, and indicating the total
3 number of Work Weeks during the applicable Class Period the Class Member worked. (*Id.*, ¶ 34(A).)
4 Upon receipt of the Class Members' Data, the Claims Administrator will run the data through NCOA
5 database to obtain current address information. (*Id.*) Within 15 business days after receiving the Class
6 Members' Data from Defendants, the Claims Administrator will mail a Notice Packet to all Class Members
7 via First-Class U.S. Mail, using mailing address provided by Defendants or an updated address if the
8 Settlement Administrator obtained one during the administration process. (*Id.*, ¶ 35(A).) Prior to mailing,
9 the Claims Administrator will perform a search based on the National Change of Address Database for
10 information to update and correct for any known or identifiable address changes. (*Id.*, ¶ 35.)

11 If a Class Notice is returned because of an incorrect address, the Claims Administrator will
12 promptly, and not later than ten (10) days from receipt of the returned Notice, search for a more current
13 address for the Class Member and re-mail the Class Notice to the Class Member. (*Id.*, ¶ 35(B).) The
14 Claims Administrator will use the Class Members' Data and otherwise work with Defendants' Counsel
15 and Class Counsel to find a more current address. (*Id.*) The Claims Administrator will be responsible for
16 taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the
17 mailing address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service as
18 undeliverable. (*Id.*) These reasonable steps will include the tracking of all undelivered mail; performing
19 address searches for all mail returned without a forwarding address; and promptly re-mailing to Class
20 Members for whom new addresses are found. (*Id.*)

21 **I. OBJECTIONS AND EXCLUSION**

22 Other than with respect to the PAGA related claims, a Class Member may request to be
23 excluded from this Settlement by timely mailing a letter to the Claims Administrator via U.S. Mail,
24 stating that the Class Member wants to be excluded from this Action. (*Id.*, ¶¶ 19(E) and 36.) This opt-
25 out letter must include the Class Member's name, address, telephone number, and signature. To be
26 valid and timely, the request to be excluded must be postmarked by no later than sixty (60) days from
27 the initial mailing of the Class Notice by the Claims Administrator. (*Id.*) A Class Member who opts-
28 out will only be bound by the PAGA Released Claims and will only receive a PAGA Share. (*Id.*)

1 A Class Member who has not opted-out of the Settlement (“Participating Class Member”) may
2 submit a written objection to the Claims Administrator. (*Id.*, ¶ 37). The written objection must be faxed
3 or postmarked, if mailed, within 60 days after the mailing of the Class Notice. (*Id.*) To be valid, the
4 written objection must state the objecting Class Member’s full name, address and telephone number, the
5 written basis for each specific objection in clear and concise terms and any legal support for the objection,
6 and must be signed by the Class Member or their legal representative. (*Id.*) However, even if a
7 Participating Class Member does not timely submit a written objection, he/she or his/her counsel may
8 still appear at the Final Approval Hearing at his/her own expense to orally present any objections. (*Id.*)

9 **J. NOTICE AND PAGA PAYMENT TO THE LWDA**

10 The Settlement provides for a total amount of **\$50,000** in settlement of all claims for civil penalties
11 under PAGA. (*Id.*, ¶ 19(E).), Pursuant to Labor Code section 2699(i), 75% of the PAGA settlement
12 amount, or **\$37,500**, will be paid to the LWDA. (*Id.*) The remaining 25%, or **\$12,500**, will be included
13 in the NSA and distributed only to the Class Members who worked for Defendants during the PAGA
14 Period. (*Id.*, ¶¶ 19(E), 20(C).) In connection with Settlement approval, Class Counsel must notify the
15 LWDA of the Settlement’s existence. This settlement was forwarded to the LWDA by Class Counsel.
16 (Setareh Decl., ¶ 17.)

17 **V. ARGUMENT**

18 **A. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT**
19 **CLASS BECAUSE IT MEETS ALL THE REQUIREMENTS FOR CLASS**
20 **CERTIFICATION FOR SETTLEMENT PURPOSES ONLY UNDER CODE OF**
21 **CIVIL PROCEDURE SECTION 382**

22 Under Code of Civil Procedure § 382, class certification is warranted so long as there is “a
23 numerous and ascertainable class with a well-defined community of interest among its members” and a
24 “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.”
25 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326, 332. “The certification question
26 is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*
27 at 326 (quoting *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440). Indeed, the certification
28 question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable
to class treatment. *E.g., Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1298. In ruling on a

1 certification motion, a trial court's task is to determine "whether...the issues which may be jointly tried,
2 when compared with those requiring separate adjudication, are so numerous or substantial that the
3 maintenance of a class action would be advantageous to the judicial process and to the litigants." *Id.*

4 "[I]t is also well established that trial courts should use different standards to determine the
5 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
6 of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court* (2003) 113
7 Cal.App.4th 836, 859 (citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 n.19 ("*Dunk*").
8 As the court noted in *Dunk*, although certification requirements are intended "to protect the interests of the
9 non-representative class members," that concern is "protected by the trial court's fairness review of the
10 settlement." *Id.*

11 Indeed, numerous courts have certified settlement classes. For example, *In re Drexel Burnham*
12 *Lambert Group, Inc.* (2d Cir. 1992) 960 F.2d 285, *cert. dismissed*, 506 U.S. 1088, 122 L. Ed. 497, 113 S.
13 Ct 1070 (1993), the parties entered into a tentative settlement before a class was certified. After a hearing,
14 the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289;
15 *see also, Alaniz v. California Processors, Inc.* (N.D. Cal. 1976) 73 F.R.D. 269, 278 ("the use of the
16 tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), *cert.*
17 *denied*, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation
18 and an approved procedure which ought to be followed in this case. *See Newberg on Class Actions* (3d ed.
19 1991) § 11.27, pp. 11-40 to 11-56; and *Manual for Complex Litigation*, 2d (1993) § 30.45.

20 As shown below, this Settlement and the Settlement Class easily meet all of the requirements for
21 certification for settlement purposes.

22 **1. Objectively Ascertainable and Sufficiently Numerous Class**

23 A class is ascertainable when it may be readily identified via an objectively stated definition
24 without unreasonable expense or time by reference to official records. *Rose v. City of Hayward* (1981) 126
25 Cal.App.3d 926, 932. No set number of class members is required to maintain a class action. *Hebbard v.*
26 *Colgrove* (1972) 28 Cal.App.3d 1017, 1030. The California Supreme Court has upheld a class of as few
27 as ten members. *Bowles v. Super. Ct. (Nickel, Jr.)* (1955) 44 Cal.2d 574, 577-81. Here, the Settlement
28 Class is made up of about 10,121 individuals, all of whom may be readily ascertained by reference to

1 Defendants' personnel records. Accordingly, the Settlement Class is not only ascertainable but also
2 sufficiently numerous.

3 **2. Predominance of Common Questions**

4 A question of law or fact is common to the members of a class if it may be resolved through
5 common proof. *See Jaimez, supra*, 181 Cal.App.4th at 1305. As for predominance, it "is a comparative
6 concept, and 'the necessity for class members to individually establish eligibility and damages does not
7 mean individual fact questions predominate.'" *Sav-on, supra*, 34 Cal.4th at 334 (*quoting Reyes v. San*
8 *Diego Cty. Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278). Thus, "[i]ndividual issues do not render
9 class certification inappropriate so long as such issues may effectively be managed." *Id.* This is especially
10 so where the key difference between class members solely concerns their respective amounts of damages.
11 *See id.* As a general rule, if a defendant's liability can be determined by facts common to all members, a
12 class will be certified even if the members must individually prove their damages. *See Hicks v. Kaufman*
13 *& Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916.

14 In this case, the Settlement Class meets these requirements. Plaintiff submits that Defendants'
15 liability arises from the same set of facts and legal questions that apply to and are answered equally as to
16 all Class Members. Plaintiff alleges Class Members were subjected to a common practice in that
17 Defendants: failed to pay them, *inter alia*, for missed rest and meal periods, including premiums (FAC, ¶¶
18 35-60), and for all hourly and overtime wages owed (*Id.*, ¶¶ 61-80) failed to reimburse for all business
19 expenses (*Id.*, 98-102); failed to provide compliant wage statements (*Id.*, 81-88); and failed to pay all
20 wages due upon separation of employment (*Id.*, 89-97).

21 The Court accordingly should certify the Settlement Class for purposes of settlement under Code
22 of Civil Procedure section 382 and Rule of Court 3.769(c).

23 **3. Typicality of Plaintiff's Claims**

24 Typicality "requires a showing that the class representative has claims or defenses typical of the
25 class." *See, e.g., Fireside Bank v. Super. Ct. (Gonzalez)* (2007) 40 Cal.4th 1069, 1090. This focuses on
26 "the nature of the claim or defense of the class representative, and not to the specific facts from which it
27 arose or the relief sought." *Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (internal
28 citations omitted). "The test of typicality 'is whether other members have the same or similar injury,

1 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class
2 members have been injured by the same course of conduct.” *Id.* (quoting *Schwartz v. Harp* (C.D. Cal.
3 1985) 108 F.R.D. 279, 282; accord *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (“it has never been
4 the law in California that the class representative must have *identical* interest with the class members”).

5 Under these standards, Plaintiff’s claims are typical of those of the class members. Like Class
6 Members, Plaintiff was an hourly non-exempt employee of Defendants in California. (Setareh Decl., ¶
7 10.) Plaintiff alleges that he and the putative class members was not paid all wages and overtime owed,
8 was not provided with compliant meal and rest breaks, were not reimbursed for all business expenses, and
9 did not receive accurate wage statements. (*Id.*) See *Classen, supra*, 145 Cal.App.3d at 46 (representative
10 plaintiffs need not have all claims or identical interests with class members; they need only have claims
11 that are “typical of the class”); see also *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App.
12 3d 1341, 1347 (representative plaintiffs need not suffer all of the exact same damages as every class
13 member). Accordingly, Plaintiff pursues claims typical of the class he seeks to represent.

14 4. Adequacy of Plaintiff and Class Counsel to Represent the Class

15 The adequacy requirement is met where the named plaintiffs are represented by counsel qualified
16 to conduct the litigation and the plaintiffs’ interest in the litigation is not antagonistic to the class’s interests.
17 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. In other words, where the named
18 plaintiffs have adequate counsel, they may represent the entire class absent any disabling conflicts of
19 interest that might hinder the named plaintiffs’ ability to represent the class. *Id.*

20 In this case, Plaintiff has no conflict of interest with absent Settlement Class Members and has
21 agreed to place the class’s interests above his own. (Setareh Decl., ¶ 10.) See *Global Minerals, supra*,
22 113 Cal.App.4th at 851 (the inquiry into the adequacy of a class representative is intended to uncover any
23 conflicts between the plaintiff and the class he or she seeks to represent). Plaintiff’s counsel, Setareh Law
24 Group, is experienced in wage and hour class action litigation and has no conflicts of interest with absent
25 Class Members. (Setareh Decl., ¶¶ 4-5, 10.) Thus, this Court should appoint Plaintiff as Class
26 Representative for the Settlement Class and appoint his counsel as Class Counsel.

27 ///

28 ///

1 **B. STANDARD FOR GRANTING PRELIMINARY SETTLEMENT APPROVAL**

2 Cases brought as class actions may only be settled upon court approval and then only after a
3 determination that the settlement is fair, adequate, and reasonable is made. *In re Microsoft I-V Cases*
4 (2006) 135 Cal.App.4th 706, 723. Courts have broad discretion to make this determination and consider
5 factors, such as the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further
6 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
7 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and
8 the reaction of the class members to the proposed settlement. *In re Microsoft*, 135 Cal.App.4th at 723;
9 *Dunk*, 48 Cal.App.4th at 1800-01; *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 336.
10 “[A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
11 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
12 is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra*, at 1802;
13 *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52.

14 California Rule of Court 3.769 sets forth the procedures for settlement of class actions in
15 California. A two-step process is required. First, the court preliminarily approves the settlement and the
16 class members are notified as directed by the court. Cal. Rule of Court 3.769(c)-(f). “The notice must
17 contain an explanation of the proposed settlement and the procedures for class members to follow in filing
18 written objections to it and in arranging to appear at the settlement hearing and state any objections to the
19 proposed settlement.” Cal. Rule of Court 3.769(f). Second, the court conducts a final approval hearing to
20 inquire into the fairness of the proposed settlement. Cal. Rule of Court 3.769(g). If the court approves
21 the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the
22 judgment. Cal. Rule of Court 3.769(h).

23 In deciding whether to grant preliminary approval, courts are to give “due regard” to “what is
24 otherwise a private consensual agreement between the parties.” *Sutter Health Uninsured Pricing Cases*
25 (2009) 171 Cal. App. 4th 495, 505. When approving a settlement, “the court need not ‘reach any ultimate
26 conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the
27 very uncertainty of the outcome in litigation and avoidance of wasteful and expensive litigation that induce
28 consensual settlements.’” *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291 (quoting

1 *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625).² The court's inquiry must
2 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
3 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
4 whole, is fair, reasonable and adequate to all concerned. *Id.*

5 **C. THIS COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
6 **PRELIMINARILY APPROVING THE SETTLEMENT BECAUSE IT IS FAIR,**
7 **ADEQUATE, AND REASONABLE**

8 **1. Settlement Resulted From Serious, Informed, Non-Collusive Negotiations**

9 The Parties reached this settlement only after they conducted extensive and protracted arm's-length
10 negotiations through an experienced and knowledgeable mediator, Hon. Margaret Nagle (Ret.). (Setareh
11 Decl., ¶ 7.) The Parties have not engaged in any collusion or improper negotiations. (*Id.*) Plaintiff and
12 Defendants do not have any agreements regarding the proposed Settlement that are not reflected in the
13 Settlement. (*Id.*)

14 **2. Sufficient Fact Investigation and Discovery Has Occurred to Assess the**
15 **Fairness of the Settlement**

16 As discussed above, Plaintiff's counsel engaged in extensive investigation and informal written
17 discovery that has allowed them to evaluate the merits of the Class Members' claims and Defendants'
18 defenses as well as the range of possible recoverable damages. (*Id.*, ¶¶ 6-9.) Based on Plaintiff's counsel's
19 investigation and discovery, Plaintiff and his counsel are of the opinion that this settlement is fair,
20 reasonable, adequate, and in the Class Members' best interest. (*Id.*) Plaintiff's counsel's investigation and
21 discovery is more than sufficient to warrant their and Plaintiff's decision to enter into the Settlement. (*Id.*)

22 Plaintiff and Defendants engaged extensively in informal discovery prior to resolving the Action.
23 Specifically, the Parties engaged in an informal, voluntary exchange of information in the context of
24 privileged settlement discussions to facilitate an early mediation. Defendants produced over 700 thousand
25 lines of time and pay data for class members, and other relevant policy documents. These records allowed

26 ² The California Supreme Court has suggested that trial courts, in the absence of controlling California
27 authority, utilize class action procedures of the Federal Rules of Civil Procedure. *See LaSala v.*
28 *American Sav. & Loan Ass'n* (1971) 5 Cal. 3d 864, 872. Thus, the Court may look to federal authorities
in ruling on this motion.

1 Plaintiff to calculate average pay rate among the Class Members, as well as analyze the potential liability
2 of Defendants. Plaintiff hired an expert to analyze the produced data with respect to potential damages
3 and penalties in preparation for mediation. From the data and other documents obtained from Defendant
4 pertaining to the Class and Defendant's policies, Plaintiff's expert was able to analyze the data sampling,
5 and Plaintiff was then able to thoroughly assess the merits of each claim.

6 **3. Plaintiff's Counsel Are Experienced Class Action and Employment**
7 **Attorneys and the Amount of Attorneys' Fees Sought Are Appropriate**

8 As detailed more completely in the declaration of Shaun Setareh, Plaintiff's counsel are
9 particularly experienced in employment law and wage and hour class actions. (Setareh Decl., ¶¶ 4-5, 15.)

10 Plaintiff's counsel believe that the one-third of the GSA that they will seek in attorneys' fees are
11 appropriate in this matter. (*Id.*, ¶ 15.) The Court of Appeal has recognized that one factor supporting a
12 lodestar multiplier is comparison to the fees typically earned in contingency fee litigation where the
13 plaintiff's attorney is awarded fees based on a percentage of the award recovered for the client: "to ensure
14 that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
15 litigation." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50. As the Court knows,
16 contingency fees typically range from one-third to forty percent. Indeed, Setareh Law Group has been
17 awarded one-third-common-fund attorneys' fees in numerous class actions. (Setareh Decl., ¶ 15.)

18 Factors that courts consider in determining the multiplier include: "The quality of the
19 representation, the novelty and complexity of the issues, the results obtained, and the contingent risk
20 presented." *Lafitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489. "There is no hard and fast
21 rule limiting [these]...numerous factors, and their evaluation is entrusted to a trial court's sound
22 discretion." *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal.App.4th 866, 901.

23 Counsel believe the proposed Settlement is fair, reasonable, and adequate in light of the
24 complexities of the case, the uncertainties of further litigation, and that it represents a fair and reasonable
25 recovery for the Settlement Class. (Setareh Decl., ¶ 7; Settlement, ¶ 41.)

26 **4. The Settlement Is Fair and Reasonable Based on the Strength of Plaintiff's**
27 **Case and the Risks and Costs of Further Litigation**

28 California courts recognize that "'the merits of the underlying class claims are not a basis for
upsetting the settlement of a class action.'" *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224,

246 (quoting *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1150). The settlement need not provide one-hundred percent of the damages sought in order to be judged reasonable. *Wershba*, 91 Cal.App.4th at 250. “Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,’ this is not a bar to a class settlement because ‘the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.’” *Id.* (quoting *Air Lines Stewards v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

The following chart provides the estimated potential recovery on a class basis that Plaintiff believes he could reasonably achieve *if he were to prevail on all his causes of action*³:

Plaintiff's Estimated Potential Recovery		
Assumptions During Class Period (based on time/payroll data provided by Defendants) <u>Number of Workweeks: 94,000:</u> <u>Average Hourly Rate: \$17.57; Overtime Rate:</u> <u>Pay periods within Wage Statement/PAGA period: 33,500</u>		
Cause of Action	Estimated Potential Recovery	Calculations for Estimated Potential Recovery
Unpaid Wages	\$330,316.00	0.2 security check hours a week x \$17.57 x 94,000 workweeks = \$330,316
Meal/Rest Period Premiums	\$1,651,580.00	1 missed meal/rest break per week x \$17.57 x 94,000 weeks = \$1,651,580.00
Sub-Total Unpaid Wages	\$1,981,896.00	
Labor Code § 203 Penalties	\$3,778,252.80	896 former employees x 8 hours x \$17.57 x 30 days =

³ Civil penalties are estimated and interest is not included in this analysis. This is proper because, first, PAGA penalties are discretionary (see Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. (See *Rodriguez v. West Publishing Corp.* (9th Cir. 2000) 563 F.3d 948, 955; see also *Miller v. CEVA Logistics U.S.A., Inc.* (E.D. Cal. Feb. 19, 2015) 2015 WL 729638, at *7(court utilized calculation of a defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).)

Labor Code § 226 Penalties	\$3,230,550	$(33,500 \times \$100) - (2,389 \text{ initial violations} \times \$50) = \$3,230,550$
TOTAL	\$8,990,698.80	
PAGA Penalties	\$3,350,000	
<i>Total if PAGA included</i>	<i>\$12,340,698.80</i>	

(Setareh Decl., ¶ 8.)

Despite a total potential recovery of a little more than \$330,316 on his unpaid wages, non-penalty, class claims, and a little under \$9 million on all class claims, including statutory penalties, Plaintiff recognizes the challenges he faces in certifying a class action and establishing liability on the wage and hour claims. (*Id.*, ¶ 9.) Plaintiff estimates that his likelihood of prevailing on all his causes of action are extremely low and thus his likelihood of recovering \$8.9 million or anything close to that amount on behalf of a class is very unlikely. (*Id.*) For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a trial on the merits. (*Id.*) In addition to having to prove that Plaintiff and other workers were not paid for all hours worked, Plaintiff must establish willfulness with respect to his waiting time penalties claim under Labor Code Section 203. (*Id.*)

With respect to the claims asserted on behalf of the Settlement Class in this case, there are significant risks that support the reduced compromise amount. These risks include, but are not limited to, the following:

(i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid overtime wages. *See Duran v. US Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 39 & fn. 33 ("*Duran*"), citing *Dilts v. Penske Logistics* (S.D. Cal. 2014) *LLC* 2014 WL 205039 (dismissing certified off-the-clock claims based on proof at trial). Defendants contend, e.g., that overtime was properly paid or not due or owing across the putative Class as alleged by Plaintiff.

(ii) The risk that Plaintiff would not be able to prove liability for alleged failure to provide compliant meal and rest breaks; or that to establish liability for the failure to provide compliant meal and rest breaks would require an individualized inquiry that would prevent these issues from being resolved

1 on a class and/or collective basis. Plaintiff alleged employees were regularly not provided uninterrupted
2 meal and rest breaks. Defendants allege that many employees took meal and rest breaks which complied
3 with California law, and that in order to prove whether each employee took their meal periods and/or rest
4 breaks would require an individualized inquiry that would prevent this issue from being resolved on a class
5 and/or collective basis.

6 (iii) The risk that Plaintiff would not recover waiting time and wage statement penalties
7 pursuant to Labor Code sections 203 and 226. For example, Plaintiff might not prove that Defendants
8 acted with the intent necessary for the alleged claims for penalties under Labor Code sections 203 and 226.
9 For example, there is currently a split of authority as to whether such penalties can be obtained based on
10 failure to provide rest breaks. *See, e.g., Singletary v. Teavana Corporation* (N.D. Cal. May 2, 2014) 2014
11 WL 1760884, *4 (noting that “the law in this area is murky at best” and holding that section 203 penalties
12 are not applicable to meal and rest break claims). Specifically, section 203 requires that a plaintiff show
13 the employer committed a “willful” violation of the law in withholding wages. “A good faith dispute that
14 any wages are due will preclude imposition of waiting time penalties under Section 203.” 8 Cal. Code
15 Regs. § 13520. Similarly, penalties pursuant to section 226 require a “knowing and intentional” violation.
16 Defendants contends that it would present several good faith defenses that would preclude a finding of
17 willfulness under section 203. *See Choate v. Celite Corp.* (2013) 215 Cal. App.4th 1460 (reversing award
18 of section 203 penalties based on good faith defense where underlying wage claim presented issue of first
19 impression). Any such good faith dispute could preclude penalties.

20 (iv) The risk that Defendants’ challenged employment policies might not ultimately support
21 class certification or a class-wide liability finding, *see, Duran*, 59 Cal. 4th at 14 & fn. 28 (citing Court of
22 Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability
23 of proposition). Defendants has contended, for example, that it did not have a purported policy of not
24 paying required compensation, but rather a policy of paying compensation and of requiring employees to
25 report any unpaid compensable time, and that any failures to report by employees cannot be legally charged
26 to Defendants and, in any event, involve such highly individualized circumstances as to prevent class and
27 collective certification should this case be litigated. *See, e.g., Morillion v. Royal Packing Co.* (2000) 22
28 Cal. 4th 575, 585 (employer not required to pay employees for time spent performing work of which the

1 employer had no knowledge).

2 (v) For the same reasons, liability, damages recovery, and certification risks are heightened
3 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendants' policies and practices
4 could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2) the risk that
5 individual differences between settlement Class Members could be construed as pertaining to liability, and
6 not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class or collective treatment could
7 be deemed improper as to one or more claims except for settlement purposes.

8 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
9 discretion could materially impact the recovery by the Class, *see* Labor Code section 2699(e)(1).

10 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
11 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
12 opposed to unpredictable litigation.

13 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to an extravagant
14 \$3,350,000, that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as
15 to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In
16 any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a)
17 or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if,
18 based on the facts and circumstances of the particular case, to do otherwise would result in an award that
19 is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a) states, "Notwithstanding any other
20 provision of law, any provision of this code that provides for a civil penalty to be assessed and collected
21 by the Labor and Workforce Development Agency or any of its departments, divisions, commissions,
22 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
23 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former
24 employees pursuant to the procedures specified in Section 2699.3." Subdivision (f) specifies the penalties
25 in instances where the underlying statute does not specify any civil penalty. In other words, where the
26 facts and circumstances of the particular case demonstrate that an unreduced award would be "unjust,
27 arbitrary and oppressive, or confiscatory," the court (or arbitrator) may reduce the award so as to ameliorate
28 any such finding. (Setareh Decl., ¶ 9.)

1 In these respects, Defendants strongly denies any liability and the propriety of class certification
2 for any reason other than settlement. (*Id.*) Continued litigation of this lawsuit presented Plaintiff and
3 Defendants with substantial legal risks that were (and continue to be) very difficult to assess. (*Id.*)

4 In light of the uncertainties of protracted litigation, the Settlement amount reflects a fair and
5 reasonable recovery for the Class Members. (*Id.*) The Settlement amount is, of course, a compromise
6 figure. (*Id.*) By necessity, it took into account risks related to liability, damages, class action certification,
7 and all the defenses asserted by Defendants as to all such matters. (*Id.*) Moreover, each settlement Class
8 Member will be given the opportunity to opt out of the Settlement, allowing those who feel they have
9 claims that are greater than the benefits they can receive under this Settlement to pursue their own claims.
10 (*Id.*)

11 **D. THE COURT SHOULD GRANT THIS MOTION AND ISSUE AN ORDER**
12 **DIRECTING THAT NOTICE BE SENT**

13 “The notice given to the class must fairly apprise the class members of the terms of the proposed
14 compromise and of the options open to dissenting class members.” *Trotsky v. L.A. Fed. Sav. & Loan Ass’n*
15 (1975) 48 Cal.App.3d 134, 151-52. “The notice must be structured to enable class members to decide
16 whether to intervene or object, ‘opt out,’ or accept the settlement.” *Id.* at 152. Class notice must strike a
17 balance between thoroughness and the need to avoid unduly complicating the content of the notice and
18 confusing class members. *Wershba*, 91 Cal. App. 4th at 252. Furthermore, an appropriate notice is one
19 which has a reasonable chance of reaching the class members. *Cartt v. Superior Court* (1975) 50
20 Cal.App.3d 960, 974.

21 The Notice of Class Action Settlement explains in plain and easily understood language what the
22 case is about; the class definition and claims; the settlement amount and approximate individual amount
23 each Class Member and/or PAGA Employee will receive; the requested amounts to be paid to class
24 counsel and as an enhancement award to the class representative; the rights of class members to opt out or
25 object to the Settlement’s terms and the process by which they can do so; the binding effect of the
26 Settlement on those who do not request exclusion, including a description of the claims being released;
27 and the particulars of the final fairness hearing. (Settlement, ¶¶ 35, Ex. 1.)

28 The Parties’ proposed plan for directing notice to the Class is also the best notice that is practicable

1 under the circumstances. Using last-known addresses provided by Defendants, the Settlement
2 Administrator will send the Notice by First Class U.S. Mail to all Class Members. (*Id.*, ¶ 35.) Further, the
3 Settlement Administrator will take reasonable steps to obtain the correct address of any Class Members
4 for whom the Notice is returned as undeliverable before attempting to re-mailing including performing
5 address searches. (*Id.*, ¶ 35(B).)

6 **E. THE COURT SHOULD SET A HEARING FOR FINAL APPROVAL**

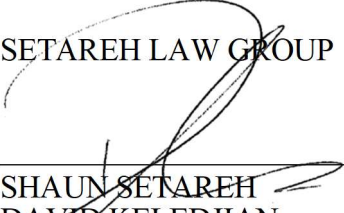
7 Finally, the Court should set a formal hearing to conduct an inquiry into the fairness of the proposed
8 settlement. Cal. Rule Ct. 7.769(e), (g). At the hearing, proponents of the Settlement may explain and
9 describe the terms and conditions and offer argument of settlement approval. Members of the Settlement
10 Class, or their counsel, may also appear and offer evidence and testimony in opposition to the Stipulation
11 of Settlement. The Parties request that the hearing on final approval of the settlement be set 130 days from
12 the Preliminary Approval Hearing, or as soon thereafter as may be convenient for the Court.

13 **VI. CONCLUSION**

14 For the foregoing reasons, the Parties respectfully submit that the Settlement's terms are fair,
15 adequate, and reasonable and that it is in the best interest of the Class Members. Under the applicable
16 class action criteria and guidelines, this Class should be conditionally certified, the Settlement should be
17 preliminarily approved, the Class should be notified regarding the Settlement, and the Court should
18 schedule a final approval hearing.

19
20 DATED: May 4, 2022

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