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[Continued on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

CAROLINE DELGADO, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

PARAMIT CORPORATION, *et al.*,

Defendants.

Case No.: 21CV383975

[Assigned for All Purposes to Honorable Sunil R.
Kulkarni, Department 1]

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: June 1, 2023
Time: 1:30 p.m.
Courtroom: Dept. 1
Judge: Hon. Sunil R. Kulkarni

Action Filed: July 2, 2021
Trial Date: Not Set

JOSE GARDUNO, *et al.*,

Plaintiffs,

vs.

PARAMIT CORPORATION., *et al.*.

Defendants.

Related Case No.: 21CV385443

Action Filed: August 9, 2021
Trial Date: Not Set

1 [Continued from first page]

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8 *Attorneys for Plaintiffs*, JOSE GARDUNO and JUAN PADILLA

9 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

10 PLEASE TAKE NOTICE that on June 1, 2023, at 1:30 p.m., or as soon thereafter as the matter
11 may be heard, in Department 1 of the above-captioned Court, located at 191 North First Street San Jose,
12 CA 95113, Plaintiffs CAROLINE DELGADO, JOSE GARDUNO and JUAN PADILLA (“Plaintiffs”) will and hereby do move this Court for an order:

- 13 1. Granting class certification of the Class, solely for settlement purposes pursuant to
14 Code of Civil Procedure § 382;
- 15 2. Preliminarily approving the CLASS ACTION AND PAGA SETTLEMENT
16 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”);
- 17 3. Appointing counsel for Plaintiffs, Moon & Yang, APC, and Falakassa Law, P.C., as
18 Class Counsel;
- 19 4. Appointing Plaintiffs as the Class Representatives;
- 20 5. Approving the use of the proposed notice procedure and related notice form;
- 21 6. Approving ILYM Group, Inc. as the third-party administrator;
- 22 7. Directing that notice be mailed to the Class; and,
- 23 8. Scheduling a hearing date for motions for final approval of class action settlement
24 and awards of attorneys’ fees and costs.

25 Good cause exists to grant this Motion because:

- 26 1. The Class meets all of the requirements for class certification for settlement
27 purposes under Code of Civil Procedure § 382;
- 28 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the

1 disputed wage and hour claims asserted by Plaintiffs;

2 3. Plaintiffs and Class Counsel are adequate to represent the Class;

3 4. The proposed notice procedures and related forms comply with California Rules of
4 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport
5 with due process; and

6 5. Based on the foregoing, notice should be directed to the Class Members and a final
7 fairness hearing should be scheduled (Plaintiffs suggest about 125 days after preliminary
8 approval is granted).

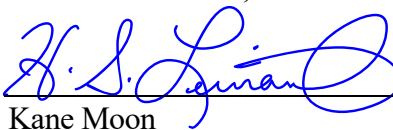
9 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
10 which require approval by the Court of a class action settlement and permit the Court to extend the page
11 limit for memoranda.

12 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
13 and Authorities, the Declarations of H. Scott Leviant, Joshua Falakassa, Plaintiffs, and the Settlement
14 Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters
15 judicially noticeable, and on such oral and documentary evidence as may be presented in connection with
16 the hearing on the Motion.

17 Respectfully submitted,

18 Dated: March 16, 2023

MOON & YANG, APC

19 By:  _____

20 Kane Moon
21 H. Scott Leviant
22 Mariam Ghazaryan

23 **FALAKASSA LAW, P.C.**
24 Joshua S. Falakassa

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	iii
I. INTRODUCTION.....	1
II. THE MAJOR TERMS OF SETTLEMENT	1
III. FACTUAL AND PROCEDURAL BACKGROUND	4
A. Plaintiffs' Claims	4
B. Pre-Mediation Data Production and Analysis.....	5
C. Settlement.....	6
IV. CLASS DEFINITION.....	6
V. DISCUSSION.....	7
A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382.....	7
1. The Members of the Class Are Objectively Ascertainable and Numerous.	7
2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.....	8
3. Plaintiffs' Claims Are Typical of Those of the Class.	8
4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.	9
5. Proceeding as a Class Action is Superior to Individual Actions.....	9
6. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule 3.766(d) and (e).....	9
a) The Notice Procedure Satisfies Due Process	10
b) The Notice is Accurate and Informative	10
B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable	10
1. Class Action Settlements Are Subject to Review and Approval.	11

2.	The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel with the Assistance of a Highly-Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.	11
3.	The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members’ Claims Based on Defendants’ Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.	12
4.	The Proposed Method for Allocating Settlement Funds Is Fair.	16
5.	The Proposed Enhancement Payments to Plaintiffs Are Fair, Adequate, and Reasonable and Warrant Preliminary Approval.	16
6.	The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.	17
7.	The Proposed Payment to the Administrator Is Fair and Reasonable.....	17
8.	The PAGA Allocation is Reasonable.....	18
VI.	THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING	19
VII.	CONCLUSION.....	20

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	12
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157 (2008)	19
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021)	17
<i>Bell v. Farmers Ins. Exchange</i> , 115 Cal. App. 4th 715 (2004)	17
<i>Cartt v. Sup. Ct.</i> , 50 Cal. App. 3d 960 (1975)	10
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal. App. 3d 605 (1987)	8
<i>Dunk v. Ford Motor Co.</i> 48 Cal. App. 4th 1794 (1996)	passim
<i>Duran v. US Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	13
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	8
<i>Global Minerals & Metals Corp. v. Superior Court</i> , 113 Cal. App. 4th 836 (2003)	7
<i>Jaimez v. Daiohs USA, Inc.</i> 181 Cal. App. 4th 1286 (2010)	7, 8
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	11
<i>Laffitte v. Robert Half Intern. Inc.</i> , 1 Cal. 5th 480 (2016)	17
<i>Linderv. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000)	7, 9
<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> , 103 Cal. App. 3d 573 (1980)	11
<i>Mallick v. Superior Court</i> , 89 Cal. App. 3d 434 (1979)	12, 18
<i>McGhee v. Bank of America</i> , 60 Cal. App. 3d 442 (1976)	9
<i>Miller v. Woods</i> , 148 Cal. App. 3d 862 (1983)	7
<i>Moniz v. Adecco USA, Inc.</i> , 72 Cal. App. 5th 56 (2021)	18, 19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , 186 Cal. App. 4th 399 (2010)	11
<i>Noel v. Thrifty Payless, Inc.</i> , 7 Cal. 5th 955, 980 (2019)	7
<i>Sav-on Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	7, 8
<i>Seastrom v. Neways, Inc.</i> , 149 Cal. App. 4th 1496 (2007)	9
<i>Stambaugh v. Superior Court</i> , 62 Cal. App. 3d 231 (1976)	11
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224 (2001)	13

FEDERAL DECISIONAL AUTHORITY

<i>Dilts v. Penske Logistics, LLC</i> 2014 WL 205039 (S.D. Cal. 2014).....	13
<i>Ferrell v. Buckingham Property Mgmt.</i> (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042	16
<i>Miller v. CEVA Logistics U.S.A., Inc.</i> , 2015 WL 729638 (E.D. Cal. Feb. 19, 2015).....	16
<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016).....	18
<i>Officers for Justice v. Civil Serv. Comm'n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	12
<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2000)	16
<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i> (C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622.....	16
<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294 (N.D. Cal. 1995)	17
<i>Viceral v. Mistras Group</i> , 2016 WL 5907869 (N.D. Cal. 2016)	18
<i>Willis v. Xerox Bus. Servs., LLC</i> , 2013 WL 6053831 (E.D. Cal. 2013)	19

STATUTES

Code of Civil Procedure § 382.....	7, 20
------------------------------------	-------

RULES

Rules of Court, rule 3.766	10
Rules of Court, Rule 3.769	7, 10, 11

OTHER AUTHORITIES

<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006	15
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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiffs request that this Court preliminarily approve the proposed class action settlement in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”) with Defendants PARAMIT CORPORATION and R & D TECHNICAL SERVICES, INC. (hereinafter referred to as “Defendants”). Plaintiffs and Defendants (collectively referred to herein as the “Parties”) reached a proposed class settlement in a gross amount (“GSA”) of **\$1,200,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of approximately **560** members. Plaintiffs respectfully request that the Court: (1) grant preliminary approval; (2) provisionally certify a Class for settlement; (3) appoint Moon & Yang, APC, and Falakassa Law, P.C., as Class Counsel; and (4) approve the proposed Class Notice and direct its distribution. Plaintiffs now submit this Motion for Preliminary Approval, along with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at Exhibit 1 thereto). Below is a summary of the key Settlement provisions.

II. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendants agree not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- Class: All current and former non-exempt employees who worked for Defendants in California during the Covered Period (the “Covered Period” is July 2, 2017 until January 31, 2023). (Settlement, ¶ 1.5, 1.12.) “Participating Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.35);
- Settlement Amount: Defendants will pay a maximum of **\$1,200,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$2,142.86** (Settlement, ¶ 1.22);
- Class Size: approximately **560** individuals who worked an approximately **62,500** workweeks. (Settlement, ¶¶ 4.1, 8);
- PAGA Group Size: an estimated **415** individuals, who worked roughly **14,000** pay periods. (Settlement, ¶¶ 4.1; Leviant Decl., ¶ 18.)

- 1 • PAGA Period: July 1, 2020 to January 31, 2023. (Settlement, ¶ 1.31);
- 2 • Escalator Clause: In the event of an increase in workweeks of over 10% from the estimate of
- 3 62,500 workweeks worked by employees during the Covered Period, (i.e., exceeds 68,750
- 4 workweeks), Defendants will either (a) increase the Gross Settlement Amount by a pro-rata
- 5 dollar value equal to the number of workweeks in excess of 68,750 workweeks, or (b) elect
- 6 to set the end date for the Covered Period on the date when the total workweeks for the
- 7 Covered Period would be 68,750 (the “Escalator Clause”). (Settlement, ¶ 8);
- 8 • Data Sampling: Time and pay records for a random sample of putative class members was
- 9 provided, with a margin of error for extrapolations calculated to be 7.95%, based on the
- 10 sample size. (Leviant Decl., ¶ 6.)
- 11 • Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in
- 12 more detail the Declaration of Leviant, at Paragraph 18;
- 13 • No Reversion: The Settlement is a *non-reversionary* settlement (Settlement, ¶ 3.1);
- 14 • Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the
- 15 Declaration of Leviant, at Paragraphs 34-40;
- 16 • No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- 17 • Class Release: The Settlement will release specified wage-and-hour claims for Class
- 18 Members (those Class Members who do not opt out of the Settlement) asserted in the
- 19 Action (Settlement, ¶¶ 2.1, 5.2);
- 20 • PAGA Release: Class Members will release the PAGA Claims that were alleged, or
- 21 reasonably could have been alleged, based on the same factual predicate as the claims stated
- 22 in the Action and Plaintiffs’ LWDA Notice Letter, regardless of whether they opt out of the
- 23 class portion of the Settlement (Settlement, ¶¶ 2.1, 5.3);
- 24 • Release Effective Date: The Release is not active until Defendants tender all payments
- 25 required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- 26 • Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’
- 27 fees and costs, service payment to Plaintiffs, administration costs, and the PAGA penalty,
- 28 the remainder will be available for distribution to Class Members who do not opt out, with

each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendants within the Class Period. The Net Settlement Amount is estimated to be at least **\$607,500.00**, resulting in an average **net** payment per Class Member of at least **\$1,084.82**, before any tax withholdings. (Settlement, ¶ 3);

- Tax Allocation: The amounts distributed to Class Members will be characterized as 30% alleged unpaid wages, 70% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2.) After performing a current value analysis based on the risk facing each claim, the exposure analysis shows that 75.83% of the exposure is attributable to penalties. Here, the allocation of 30% to wages is both supportable and conservative. (Leviant Decl., ¶ 18.)
- Employer's Portion of Payroll Taxes Paid Separately: Defendants' portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM Group, Inc., in an amount not to exceed \$20,000.00, and the Parties accepted ILYM Group, Inc.'s bid for settlement administration services in the amount of **\$11,990.00**. (Settlement, ¶ 3.2.3; Hartranft Decl., Exh. C.)
- Class Data for Administration: The Settlement Administrator will receive the Class List within 14 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection

(Settlement, ¶¶ 7.5 and 7.7);

- PAGA Allocation: From the GSA, **\$120,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$90,000**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
- Enhancement/Service Awards to Plaintiffs: Defendants will not oppose the application for Class Representative Service Payments of up to **\$7,500.00** for each Plaintiff, to be paid from the GSA, for a total of \$22,500.00. (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendants will not oppose Class Counsels’ application for fees not to exceed 33 1/3% of the GSA (**\$400,000.00**), and actual costs, in an amount not to exceed **\$30,000**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the *cy pres* the State Bar Justice Gap Fund (Settlement, ¶ 4.4.3);
- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs’ Claims

On July 2, 2021, Plaintiff Delgado commenced this Action by filing a Complaint alleging causes of action against Defendants for: (1) failure to provide meal periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198 and Wage Order); (2) failure to provide rest periods (Lab. Code §§ 204, 223, 226.7 and 1198 and Wage Order); (3) failure to pay all hourly wages (Lab. Code §§ 223, 510, 1194, 1194.2, 1197,

1 1997.1 and 1198 and Wage Order as to minimum wage), including both minimum wage, straight time
2 and overtime; (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§
3 226(a) 1174); (5) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204, 210);
4 (6) failure to indemnify necessary business expenses (Lab. Code § 2802); and (7) unfair competition
5 (Bus. & Prof. Code §§ 17200 et seq.). (Leviant Decl., ¶ 4.)

6 Plaintiff Delgado satisfied the administrative exhaustion prerequisite to filing a claim for Civil
7 Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.]
8 (“PAGA”). On September 9, 2021, Plaintiff Delgado filed a First Amended Complaint alleging an
9 additional cause of action against Defendants for violation of the PAGA. The First Amended Complaint,
10 or any subsequently filed complaint, is the operative complaint in the Action (the “Operative
11 Complaint.”) Defendants deny the allegations in the Operative Complaint, deny any failure to comply
12 with the laws identified in in the Operative Complaint and deny any and all liability for the causes of
13 action alleged. (Leviant Decl., ¶ 5.) Separately, Plaintiffs Jose Garduno and Juan Padilla filed an action
14 entitled *Jose Garduno & Juan Padilla v. Paramit Corporation, R & D Technical Services, Inc., et. al.*,
15 pending in Superior Court of the State of California, County of Santa Clara, Case No. 21CV385443. In
16 addition to the claims alleged in the First Amended Complaint filed by Plaintiff Delgado, Plaintiffs Jose
17 Garduno and Juan Padilla alleged a claim for unlawful deductions from wages. (*Id.*)

18 **B. Pre-Mediation Data Production and Analysis**

19 Prior to mediation, Plaintiffs obtained, through informal discovery, electronic time and pay
20 records, policy documents, and data about the class. (Leviant Decl., ¶ 6.) The statistical validity of the
21 sampled records is addressed in the concurrently-filed declaration of H. Scott Leviant, at Paragraph 6.
22 The Parties have analyzed payroll and other data pertaining to Plaintiffs and the Class during the relevant
23 Settlement Period, including but not limited to the numbers of former and current members of each
24 purported subclass within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In
25 addition, Defendants also provided documents reflecting their wage and hour policies and practices
26 during the Settlement Period and information regarding the total number of current and former
27 employees in the Class. (*Id.*)

28 After reviewing documents regarding Defendants’ wage and hour policies and practices and

1 other information obtained during the informal exchange of discovery, Class Counsel were able to
2 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
3 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
4 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
5 claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

6 C. Settlement

7 On September 9, 2022, the Parties participated in an all-day mediation presided over by
8 experienced mediator Tripper Ortman, Esq. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed
9 at length the burdens and risks of continuing with the litigation as well as the merits of the claims and
10 defenses. (*Id.*) The Parties agreed to the terms of a proposed settlement and signed a long form
11 settlement agreement (the Agreement). (*Id.*)

12 Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for
13 the claims asserted in the Action, both generally and in response to Defendants' defenses thereto.
14 (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendants' agreement to
15 enter into a Settlement that confers substantial relief upon the Class.

16 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set
17 forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
18 Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the
19 requirements for establishing class action certification with respect to this class are satisfied. (*Id.*) If this
20 Settlement is not approved by the Court for any reason, Defendants reserve their rights to contest class
21 certification. (*Id.*) This Settlement, if approved, will result in termination of the litigation through the
22 entry of the Judgment and the release of all Released Claims for all Class Members, including all within
23 the class definition who have not elected to exclude themselves from the Class. (*Id.*)

24 IV. CLASS DEFINITION

25 The Class is defined as follows:

26 All current and former non-exempt employees who worked for Defendants in
27 California during the Covered Period (the "Covered Period" is July 2, 2017 until
28 January 31, 2023). (Settlement, ¶ 1.5, 1.12.) "Participating Class Members" are those
Class Members who do not submit timely exclusion requests to the Settlement
Administrator. (Settlement, ¶ 1.9, 1.35)

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. DISCUSSION

A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendants stipulated to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000); *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). This Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1. **The Members of the Class Are Objectively Ascertainable and Numerous.**

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). In this case, Plaintiffs contend that all three considerations favor class certification.

A class is ascertainable when “it is defined ‘in terms of objective characteristics and common transactional facts’ that make ‘the ultimate identification of class members possible when that identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). In this case, there are approximately **560** Class Members, all of whom may be identified by reference to Defendants’ records. In addition, to facilitate the administration of the Settlement, Defendants have agreed to share the information from their records and have already demonstrated that they can do so. Accordingly, the Class is not only ascertainable, but also sufficiently numerous. (Leviant Decl., ¶ 35.)

1 **2. There Are Common Questions That Predominate Over Any Questions That**
2 **May Be Unique to Individual Class Members.**

3 The community of interest requirement embodies three factors: (1) predominant questions of law
4 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
5 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806. A question of
6 law or fact is common to the members of a class if it may be resolved through common proof. *See*,
7 *Jaimez*, 181 Cal.App.4th at 1305.

8 In this case, Plaintiffs contend that common questions exist. (Leviant Decl., ¶¶ 37-38.) Plaintiffs
9 further contend that the claims present sufficient common issues of law and fact that predominate over
10 individual issues and warrant class certification. From their review of the documentation provided, Class
11 Counsel allege that for purposes of these claims, Defendants’ policies and practices are either identical,
12 or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because
13 Class Members would have to prove the same issues of law and fact to prevail, and because their
14 potential legal remedies are identical, it would be preferable to resolve all Class Members’ claims by
15 means of the Settlement than to require each Class Member to litigate his or her individual claims.
16 Therefore, common questions predominate over any questions that may be unique to individual Class
17 Members, and class-wide settlement is superior to any other method of resolution.

18 **3. Plaintiffs’ Claims Are Typical of Those of the Class.**

19 Typicality “requires a showing that the class representative has claims or defenses typical of the
20 class.” *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008). Plaintiffs
21 need not have claims identical to the other class members. Rather, the test of typicality is whether other
22 members have the same or similar injury, whether the action is based on conduct which is not unique to
23 the named plaintiffs, and whether other class members have been injured by the same course of conduct.
24 *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

25 In light of these standards, Plaintiffs are typical of class members. Like other Class Members,
26 Defendants employed Plaintiffs in non-exempt positions during the Class Period, and Plaintiffs claim
27 that they were subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶
28 36.) Plaintiffs allege that they and other Class Members share the same claims stemming from

Defendants' alleged violations of the Labor Code and relevant wage order. In addition, Defendants' main defenses, including that the wage and hour policies and practices fully comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiffs are typical of the Class.

4. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the Class.

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members' interests. *McGhee v. Bank of America*, 60 Cal.App.3d 442, 451 (1976). In the Action, Plaintiffs have no conflicts of interest with other Class Members and have agreed to place Class interests above Plaintiffs' own. (Levant Decl., ¶ 39; Delgado Decl., ¶¶ 5-14; Garduno Decl., ¶¶ 5-14; Padilla Decl., ¶ 5-14.) Moreover, Plaintiffs' counsel are experienced in wage and hour class litigation and have no conflicts of interest with absent Class Members. (Levant Decl., ¶¶ 21-26, 39; Falakassa Decl., ¶ 7-13.) Thus, this Court should appoint Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel.

5. Proceeding as a Class Action is Superior to Individual Actions

Plaintiffs contend that proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results, which may be avoided by class certification.

6. The Proposed Class Notice Is Constitutionally Sound and Complies with Rule 3.766(d) and (e)

The proposed notice and settlement procedure are appropriate. Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of the notice, the court must consider the interests of the class, the type of relief requested, the stake of the individual class members, the cost of notifying class members, the resources of the parties, the possible prejudice to class members who do not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e). Notice is sufficient when it provides class members sufficient information to make informed decisions. *See Mullane v. Cent. Hanover Bank & Trust, Co.*, 339 U.S. 306, 314 (1950).

1 a) *The Notice Procedure Satisfies Due Process*

2 The proposed procedure for distributing the Proposed Notice is robust and more than meets the
3 minimal requirement that it have “a reasonable chance of reaching a substantial percentage of the class
4 members.” *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process
5 requirement that all class members receive actual notice, but in this matter, the Class Members will
6 receive direct mailed notice. Here, the proposed procedure includes safeguards, including mailing notice
7 to Class Members’ last known addresses; skip tracing; searches for address changes; and the re-mailing
8 of returned notices to any forwarding addresses. This manner of notice complies with Rule 3.766(c)
9 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

10 b) *The Notice is Accurate and Informative*

11 The proposed Notice of Class Action Settlement should be approved for dissemination to the
12 Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief
13 explanation of the case, including the basic contentions or denials of the Parties, detailed information
14 about Class Members’ rights to be excluded from the Settlement and object to the Settlement; a
15 statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also
16 satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

17 The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It
18 summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative
19 and coherent manner, in compliance with the Manual for Complex Litigation (“MANUAL”), (2d Ed.
20 1993), which states that “the notice should be accurate, objective, and understandable to Class Members .
21 . . .” MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability
22 by Defendants and recognizes that this Court has not ruled on the merits. It also states that the final
23 settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of
24 fairness, completeness, and neutrality required of a combined settlement-certification class notice.

25 **B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair,**
26 **Adequate, and Reasonable**

27 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
28 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists

1 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
2 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
3 settlement approval, notice being given to class members, and a final fairness and approval hearing being
4 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
5 below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the
6 Class as proposed, and schedule a final fairness and final approval hearing.

7 **1. Class Action Settlements Are Subject to Review and Approval.**

8 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
9 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
10 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
11 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
12 motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

13 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
14 of the claims in question and the basis for concluding that the consideration being paid for the release of
15 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
16 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical
17 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

18 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
19 **Between Experienced Counsel with the Assistance of a Highly-Qualified**
20 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

21 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
22 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
23 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
24 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
25 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
26

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary approval stage.

trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g., Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Relevant factors in making this determination, include, but are not limited to:

[T]he complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

Here, the Settlement resulted from thorough, arms’ length negotiations between experienced counsel with the assistance of a highly-regarded mediator. (Levant Decl., ¶¶ 8-10.) With respect to the claims at issue in this case, Plaintiffs obtained data from Defendants (through informal discovery) and then carefully reviewed that information. Counsel for Plaintiffs also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendants’ practices. Based on the totality of that review, Plaintiffs estimated the potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation that Plaintiffs’ counsel conducted was sufficient to provide enough information to intelligently evaluate the estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members’ Claims Based on Defendants’ Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

The proposed Settlement of \$1,200,000.00 offers substantial, timely, and guaranteed payments to Class Members. A settlement is not judged against what might be recovered at trial and does not have to provide 100% of damages to be reasonable. “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4th at 250.

1 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
2 support the reduced compromise amount. These risks include, but are not limited to risks that: (i)
3 Plaintiffs would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
4 *US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC*
5 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
6 Defendants' meal and rest period policies might not ultimately support class certification or a class-wide
7 liability finding; (iii) uncertainties pertaining to the ultimate legality of Defendants' policies and practices
8 could preclude class-wide awards of statutory penalties; (iv) individual differences between Class
9 Members could be construed as pertaining to liability and not just damages; (v) any civil penalties award
10 under the PAGA could be reduced by the Court in its discretion; (vi) class treatment could be deemed
11 improper as to one or more claims, except for settlement purposes; (vii) a Court could have limited the
12 Class in terms of scope or job title; (viii) lengthy appellate litigation could ensue; and, (ix) violation rate
13 estimates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

14 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
15 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
16 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
17 liability, damages, and the defenses asserted by Defendants. (*Id.*) Moreover, each Class Member will be
18 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are
19 greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the
20 approximately 560 members of the Class, the average **gross** recovery is approximately **\$2,142.86** per
21 class member, and the estimated average **net** recovery for each Class Member is approximately
22 **\$1,084.82**. (*Id.*) Given that Defendants could challenge certification and liability, this is a significant
23 sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks
24 for Defendants will receive a larger share of the Settlement than a Class Member who worked for a
25 shorter amount of time during the class period. (*Id.*)

26 After analyzing the claims in this matter, Plaintiffs concluded that the value of this Settlement is
27 fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$1,200,000** is
28 84.71% of the **\$1,416,650.25** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the

litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, the amount of time covered by the class period. (*Id.*)

Plaintiffs' counsel estimates that the calculated plausible exposure is **\$5,936,707.85**, including PAGA penalties and **no discount applied to any class claim**. (*Id.*)

- The reasonably estimated exposure for unpaid wages due to off-the-clock pre-shift work was projected to be **\$253,274.40**, but with chances of certification and proof of liability (40% and 20% respectively) for a risk-adjusted exposure of **\$20,261.95**.
- The reasonably estimated exposure for unpaid wages due to regular rate miscalculations was projected to be **\$72,431.00**, but with chances of certification and proof of liability (60% and 35% respectively) for a risk-adjusted exposure of **\$15,210.51**.
- The reasonably estimated exposure for unpaid wages due to adverse rounding was projected to be **\$258,095.50**, but with chances of certification and proof of liability (70% and 70% respectively) for a risk-adjusted exposure of **\$126,466.80**.
- The reasonably estimated exposure for alleged rest break violations over the class period was calculated at **\$535,919.20** (*generously* assuming 100% of the class experienced a rest break issue in 20% of all breaks) but with low chances of certification and proof of liability (30% and 20% respectively) for a risk-adjusted exposure of **\$32,155.15**.
- The reasonably estimated exposure for alleged meal break violations over the class period was calculated at **\$950,618.25** (assuming all facial violations could be shown to be a meal break violation), with chances of certification and liability risks (40% and 35% respectively) resulting in a risk-adjusted exposure of **\$133,086.56**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$232,249.50** and **\$558,843.39**, respectively, on maximum exposures of **\$552,975.00** and **\$1,330,579.50**, respectively. The certification and liability risk factors are contingent upon the underlying unpaid wage claims and are assumed to be the same as those (70% and 60%), but with a slight downward adjustment because the willfulness element is uncertain as to rounding.
- The reasonably estimated exposure for unreimbursed expenses was over-estimated to be **\$95,415.00**, but with chances of certification and proof of liability (40% and 40% respectively) for a risk-adjusted exposure of **\$15,266.40** (and even that figure overstates the reasonable exposure, not all employees incurred any expenses).
- The unlawful deductions allegation was evaluated and determined to be of insignificant value, when compared to the other claims in this matter.
- PAGA penalties were calculated as having a maximum realistic exposure of **\$843,800.00**, but a risk adjusted value of **\$168,760.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

1 (See, Leviant Decl., ¶ 18.)

2 The \$1,200,000 settlement here is fully supportable. First, it is important to recognize the
3 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶
4 19.) Second, rest break and meal period claims have been challenging to certify, even after *Brinker*.
5 (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom
6 holds. See, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on*
7 *certification* (February 19, 2010), www.thecomplexlitigator.com, available at
8 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
9 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); see also, *Findings of the Study of California Class Action Litigation, 2000-2006*,
10 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
11 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
12 settlement *or* as part of a contested certification motion).

13 Here, the estimated certification probabilities are *above* the average rate at which cases were
14 certified in California over the study years, based upon data available through the California Courts
15 websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are
16 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is **20.21%** of the maximum
17 plausible recovery (estimated to be approximately **\$5,936,707.85**, including over \$1,887,400.00 in
18 PAGA penalties), which falls within the expected outcome under the likelihood of success metric and
19 which compares favorably to other cases in which courts have granted approval of class wage and hour
20 settlements representing a smaller fraction of the maximum theoretical damages.² (*Id.*) It would also be
21 appropriate to evaluate the result by examining only the premium wages at issue (approximately
22 \$2,070,338.35, with no risk reduction), excluding penalties and interest; the settlement is about 58% of
23 the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum
24

25
26 ² See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-
27 00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that
28 represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.*
(C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final
approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

1 realistic exposure values.³ Because the total Settlement amount and the proportion of the Settlement
2 allocated to PAGA penalties fall within a reasonable range, the Settlement should be approved.

3 Finally, the tax allocation of 30% to wages is reasonable. At current values, the exposure
4 analysis shows that 75.83% of the exposure is attributable to penalties. Here, the allocation of 30% to
5 wages is both supportable and conservative. (Leviant Decl., ¶ 18.)

6 **4. The Proposed Method for Allocating Settlement Funds Is Fair.**

7 The proposed method of allocating the Settlement to Class Members also is fair. As noted, the
8 Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class
9 Period, in relation to the total amount of time worked by all participating Class Members collectively.
10 This proposed method is fair and reasonable because each Class Member's actual potential damages vary
11 based on the number of workweeks he or she actually worked. A Class Member who worked a greater
12 number of weeks for Defendants will receive a larger payment under the Settlement than a Class
13 Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

14 **5. The Proposed Enhancement Payments to Plaintiffs Are Fair, Adequate, and** 15 **Reasonable and Warrant Preliminary Approval.**

16 The proposed enhancement payment of \$7,500 to each Plaintiff is intended to recognize the value
17 of the substantial initiative and significant efforts by Plaintiffs on behalf of the Class. Courts routinely
18 approve incentive awards to compensate named plaintiffs for the services they provide and the risks they
19 incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v.*
20 *Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named
21 plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294
22 (N.D. Cal. 1995) (approving a \$50,000 enhancement award). Plaintiffs contributed to the prosecution of
23 this matter, including assistance prior to the mediations and substantial time conferring with counsel over
24

25 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
26 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser
27 amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate
28 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015).

the course of this litigation and before filing. (Leviant Decl., ¶ 32; Delgado Decl., ¶¶ 5-14; Garduno Decl., ¶¶ 5-14; Padilla Decl., ¶ 5-14.) The enhancements also recognize the risks Plaintiffs took on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs sued a former employer. The accompanying Declarations of Plaintiffs confirm their involvement and support appointment as Class Representatives.

6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiffs’ counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: “[F]ee awards in class actions average around one-third of the recovery’ regardless of ‘whether the percentage method or the lodestar method is used.’” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels’ experience in class cases. Here, Plaintiffs’ attorneys intend to request attorneys’ fees of up to \$400,000.00 (one-third of the GSA), and costs capped at \$30,000 (which includes payment for mediation, filing fees, and other expenses). (Leviant Decl., ¶ 31.) Given the efforts and risks involved, as well as the results achieved, these amounts are within the range of reasonableness.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is “fair, adequate,

⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

1 and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). ILYM Group, Inc., which
2 was selected due to its competitive bid, estimates that administration can be performed for **\$11,990.00**.
3 (ILYM Decl.) In Class Counsel’s experience, an estimated cost of **\$11,990.00** is a fair and reasonable
4 amount for administration fees and should be preliminarily approved. (Leviant Decl., ¶ 33.)

5 **8. The PAGA Allocation is Reasonable**

6 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
7 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil
8 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
9 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
10 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

11 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
12 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
13 federal court decisions addressing that question. In their view, a PAGA allocation, even if a small
14 portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour
15 claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies,*
16 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members
17 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
18 members as employees, but may have a deterrent effect upon the defendant employer and other
19 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
20 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
21 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
22 because the non PAGA settlement is relatively substantial.”) *Moniz* then provided explicit confirmation
23 that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement.
24 *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to
25 evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along
26 with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present labor law
27 violations, deter future ones, and to maximize enforcement of state labor laws.”

28 As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion of

1 the adequacy of the settlement generally. Here, the expense, complexity and duration of future litigation
2 was to some extent unknown. However, what is certain is that to establish the foundational violations
3 that would support a substantial penalty award, tremendous time and expense would be invested.

4 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
5 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
6 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
7 portion of settlement funds to class members still advances the goal of labor law violation remediation.
8 The allocation of a major portion of settlement funds to class members also deters future violations. This
9 is a \$1,200,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
10 of settlement funds to class members still advances the goal of enforcement of state labor law. This
11 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

12 In addition, there is no evidence that a court or a commissioner had informed Defendants that any
13 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
14 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
15 significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a
16 case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d at 941.

17 Finally, the PAGA allocation is fair. The LWDA is receiving \$90,000.00. The Class is
18 receiving, net, an estimated \$607,500.00 for the releases of eight other theories of recovery. While the
19 proportion is tipped in favor of the Class Members, an allocation to the LWDA equal to about 15% of the
20 Net Settlement Amount is not unfair and satisfies policies underlying California's wage and hour laws.

21 **VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING**

22 The last step in the settlement approval process is the fairness hearing, where the Court makes a
23 final determination about the propriety of settlement. Under the Settlement, Defendants will have 14
24 days to provide the mailing data to the Settlement Administrator, which will then have 14 days to mail
25 out class notice. Class Members have 45 days after mailing of the notice to submit exclusions or
26 objections (extended by 14 days for re-mailed Notice Packets). Plaintiffs propose that the final approval
27 hearing be scheduled for the first available date that is **125** days or later after preliminary approval is
28 granted.

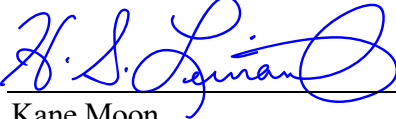
1 **VII. CONCLUSION**

2 For all the foregoing reasons, because the Class meets the requirements for certification, because
3 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
4 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
5 this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of
6 Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

7 Respectfully submitted,

8 Dated: March 16, 2023

MOON & YANG, APC

9
10 By:  _____

11 Kane Moon
H. Scott Leviant
Mariam Ghazaryan

12 Attorneys for Plaintiff

13 **FALAKASSA LAW, P.C.**
14 Joshua S. Falakassa

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original ☒ a true copy thereof ☒ to interested parties as follows ☐ as stated on the attached service list:

Jose Macias Jr.
Hector Rodriguez
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☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

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I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **March 20, 2023** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature