

Armond M. Jackson (SBN 281547)
JACKSON APC

2 Venture Plaza, Suite 240
Irvine, California 92618

Telephone: (949) 281-6857

Fax: (949) 777-6218

Email: ajackson@jacksonapc.com

Attorney for Plaintiff, Armando Diaz-Garcia

Kane Moon (SBN 249834)

Allen Feghali (SBN 301080)

Jacquelyne VanEmmerik (SBN 339338)

MOON LAW GROUP, PC

1055 West Seventh Street, Suite 1880

Los Angeles, California 90017

Telephone: (213) 232-3128

Facsimile: (213) 232-3125

Email: kmoon@moonlawgroup.com

Email: afeghali@moonlawgroup.com

Email: jvanemmerik@moonlawgroup.com

Attorneys for Plaintiff, Jose Elias Barajas

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ARMANDO DIAZ-GARCIA, as an individual,
and on behalf of all other similarly situated
employees,

Plaintiff,

vs.

AWESOME PRODUCTS, INC., a California
corporation and DOES 1-50, inclusive,

Defendant.

Case No.: 30-2021-01193589-CU-OE-CXC
Consolidated with Case No.: 30-2021-
01217438-CU-OE-CXC

[Honorable Lon F. Hurwitz,
Department CX103]

**PLAINTIFFS ARMANDO DIAZ-GARCIA
AND JOSE ELIAS BARAJAS' NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

JOSE ELIAS BARAJAS, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

AWESOME PRODUCTS, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

*[Filed with the Declaration of Kane Moon,
Declaration of Armond Jackson, Declaration
of Plaintiff Jose Elias Barajas, and
[Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: ~~October 6, 2023~~ December 15, 2023

Time: 1:30 PM

Dept: CX103

Complaint Filed: April 2, 2021

Trial Date: Not Set

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

2 December 15,
3 PLEASE TAKE NOTICE that on ~~October 6~~, 2023, at 1:30 p.m., in Department CX103 of
4 the Superior Court of the State of California, County of Orange, located at 751 West Santa Ana
5 Boulevard, Santa Ana, California 92701, pursuant to *California Code of Civil Procedure* section
6 382 and *California Rules of Court* rules 3.769, *et. seq.*, Plaintiffs Armando Diaz-Garcia and Jose
7 Elias Barajas (“Plaintiffs”) will move the Court for an Order granting preliminary approval of the
8 proposed Joint Stipulation of Class and PAGA Action Settlement (“Settlement”) between
9 Plaintiffs and Defendant Awesome Products, Inc. (“Defendant”). Plaintiffs will further move the
10 Court for an Order:

- 11 1. Certifying the putative Class for settlement purposes;
12 2. Approving the proposed Class Notice and plan for distribution of the Notice Packet to
13 Settlement Class Members;
14 3. Appointing Plaintiffs as Class Representatives for settlement purposes;
15 4. Appointing Jackson, APC and Moon Law Group, PC as Class Counsel for settlement
16 purposes;
17 5. Appointing ILYM Group, Inc. as Administrator for settlement purposes; and
18 6. Scheduling a Final Fairness Hearing.

19 The Motion is based on this Notice, the attached Memorandum of Points and Authorities,
20 the Declaration of Kane Moon, the Declaration of Armond Jackson, the Declaration of Plaintiff
21 Armando Diaz-Garcia, the Declaration of Plaintiff Jose Elias Barajas, the records and files in this
22 Action, and any other evidence or argument that the Court may properly receive before or at the
23 Hearing.

24 Respectfully submitted,

25 Dated: September 7, 2023

26 JACKSON, APC

27 By: /s/ Armond Jackson

28 Armond Jackson, Esq.

 Attorneys for Plaintiff, Armando Diaz-Garcia

1 Dated: September 7, 2023

MOON LAW GROUP, PC

2
3 By: 

4 Kane Moon, Esq.

Allen Feghali, Esq.

5 Jacquelyne VanEmmerik, Esq.

Attorneys for Plaintiff, Jose Elias Barajas

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A.	Plaintiffs' Claims.....	1
B.	Defendant's Defenses	2
C.	Discovery And Analysis	3
D.	Settlement Negotiations	3
E.	Key Terms Of The Settlement	4
III.	THE SETTLEMENT MERITS PRELIMINARY APPROVAL	9
A.	The Circumstances Of The Settlement Support Approval.....	9
1.	The Investigation Was Sufficient To Allow Class Counsel To Act Intelligently	10
2.	The Settlement Was Reached Through Arm's-Length Negotiations	12
3.	Class Counsel Are Not Only Experienced In Similar Litigation, But Have Substantial Class Action Experience	13
4.	The Percentage Of Objectors Is Likely To Be Small.....	13
B.	The Terms Of The Settlement Are Fair And Reasonable.....	14
1.	The Class Counsel Fees Payment Is Fair And Reasonable.....	14
a)	The Class Counsel Fees Payment Was Calculated Using The Common Fund Doctrine And Is In Line With The Leading Treaties On Awards Calculated Using The Common Fund Doctrine.....	14
i)	The Common Fund Doctrine Is Applicable In The Context Of Class Action Settlements	14
ii)	The Common Fund Doctrine Is Favorable In The Context Of Class Action Settlements	15
iii)	The Class Counsel Fees Payment Is In Line With The Leading Treaties On Awards Calculated Using The Common Fund Doctrine	16
b)	The Class Counsel Fees Payment Comports With The Fee-Shifting Provision Set Out Under Labor Code Sections 2698, <i>Et Seq.</i>	17

1	c) The Class Counsel Fees Payment Reflects Class Counsel's Significant	
2	Experience, Reputation And Ability In Class Action Settlements	17
3	2. The Class Counsel Litigation Expenses Payment Is Fair And Reasonable	18
4	3. The Class Representative Service Payments Are Fair And Reasonable.....	18
5	IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	20
6	A. Legal Standard	20
7	B. The Criteria For Class Certification Are Satisfied	20
8	1. The Class Is Ascertainable And Identifiable.....	20
9	2. The Class Is Numerous	21
10	3. There Is A Well-Defined Community Of Interest	21
11	4. A Class Action Is Superior To A Multiplicity Of Litigation	23
12	V. THE CLASS NOTICE MERITS PRELIMINARY APPROVAL	23
13	A. The Class Notice Satisfies State Law	23
14	B. The Class Notice Is Accurate And Informative	23
15	VI. CONCLUSION	24

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Angeles v. U.S. Airways, Inc.</i> (N.D. Cal. Feb. 19, 2013) No. C12-05860 CRB, 2013 WL 622032	2
<i>Dunleavy v. Nadler</i> (9th Cir. 2000) 213 F.3d 454	11
<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174	19
<i>In re Activision Securities Litigation</i> (N.D. Cal. 1989) 723 F.Supp. 1373	15
<i>In re Lifelock, Inc. Marketing and Sales Practices Litigation</i> (D. Ariz. 2010) 2010 WL 3715138	13
<i>In re Pacific Enterprises Securities City and County of San Francisco Litigation</i> (9th Cir. 1994) 47 F.3d 373	15
<i>Leyva v. Medline Ind.</i> (9th Cir. 2013) 716 F.3d 510	23
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	12
<i>Pedroza v. PetSmart, Inc.</i> (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK (DTBx), 2012 WL 9506073	2
<i>Staton v. Boeing Co.</i> (9th Cir. 2003) 327 F.3d 938	18
<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F.Supp. 294	16
<i>Vincent v. Hughes Air West, Inc.</i> (1977) 557 F.2d 759	15

OTHER AUTHORITIES

Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303 (2006)	19
--	----

RULES

California Rules of Court, Rule 3.766	23
California Rules of Court, Rule 3.769(f)	23

TREATISES

Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03	16
Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39	24

STATE CASES

<i>Bowles v. Super. Ct.</i> (1955) 44 Cal.2d 574	21
<i>Cartt v. Super Ct.</i> (1975) 50 Cal.App.3d 960.....	23
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	16
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105.....	15
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	22
<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605.....	21
<i>Collins v. Rocha</i> (1972) 7 Cal.3d 232	21
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal. 2d 695.....	20
<i>Viceral v. Mistras Grp., Inc.</i> (N.D. Cal. 2016) No. 15-cv-02198-EMC, 2016 WL 5907869.....	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 10, 21
<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443.....	19, 23
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	9, 13
<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	22
<i>Miller v. Woods</i> (1983) 148 Cal. App. 3d 862	20, 22
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	9, 18
<i>Neary v. Regents of Univ. of California</i> (1992) 3 Cal.4th 272	9
<i>Petrovic v. Amoco Oil Co.</i> (8th Cir. 1999) 200 F.3d 1140	14
<i>Progressive West Ins. Co. v. Superior Court</i> (2005) 135 Cal.App.4th 263	14
<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162.....	15
<i>Richmond v. Dart Indus., Inc.</i> (1981) 29 Cal. 3d 462.....	20
<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948	18
<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	21
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224.....	14
<i>Wilner v. Sunset Life Ins. Co.</i> (2000) 78 Cal.App.4th 952	20

STATUTES

Code of Civil Procedure § 382.....	20, 21
Labor Code § 90.5	19

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Armando Diaz-Garcia and Jose Elias Barajas (“Plaintiffs”) move the Court for
4 preliminary approval of the Joint Stipulation of Class and PAGA Action Settlement
5 (“Settlement”) between Plaintiffs and Defendant Awesome Products, Inc. (“Defendant”)
6 (together with Plaintiffs, the “Parties”). The Settlement, which was reached after extensive
7 discovery and investigation, and an arm’s-length mediation, provides substantial monetary
8 payments to approximately 107 Class Members. The Settlement also meets the requisite criteria
9 for settlement approval under California law. Plaintiffs further move the Court for certification
10 of the putative Class and approval of the Class Notice.

11 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

12 **A. Plaintiffs’ Claims**

13 Plaintiffs’ Consolidated Second Amended Class and Representative Action Complaint
14 alleges Defendant: Failed to Pay Minimum Wages [*Labor Code* §§ 204, 1194, 1194.2, and
15 1197]; Failed to Pay Overtime Compensation [*Labor Code* §§ 1194 and 1198]; Failed to
16 Provide Meal Periods [*Labor Code* §§ 226.7 and 512]; Failed to Authorize and Permit Rest
17 Breaks [*Labor Code* § 226.7]; Failed to Indemnify Necessary Business Expenses [*Labor Code* §
18 2802]; Failed to Lawfully Collect or Receive Wages [*Labor Code* § 221]; Failed to Timely Pay
19 Final Wages at Termination [*Labor Code* §§ 201-203]; Failed to Provide Accurate Itemized
20 Wage Statements [*Labor Code* § 226]; Engaged in Unfair Business Practices [*Business and*
21 *Professions Code* §§ 17200, et. seq.]; and Owes Civil Penalties Under the California Private
22 Attorneys General Act of 2004 [*Labor Code* §§ 2698, et. seq.]. *Moon Decl.*, ¶ 3.

23 Plaintiff Armando Diaz-Garcia worked for Defendant as an hourly employee during the
24 Class Period. *Moon Decl.*, ¶ 4. Plaintiff Jose Elias Barajas worked for Defendant as a Forklift
25 Operator from July 2020 to September 2020. *Id.* During their entire employment with Defendant,
26 Plaintiffs were classified as non-exempt; were paid on an hourly basis; and typically worked
27 five days per workweek and eight or more hours per workday. *Moon Decl.*, ¶ 5. Further,
28 Plaintiffs were subjected to the same alleged unlawful labor practices as their coworkers. *Id.*

1 **B. Defendant's Defenses**

2 Defendant is a household cleaning product manufacturer located in Buena Park,
3 California. *Moon Decl.*, ¶ 6. Defendant denies the allegations set out by Plaintiffs and opposes
4 the merits of this Action. *Id.* First, Defendant asserts it complied with all of its compensation
5 obligations, including compensating Class Members for all off-the-clock work, and therefore,
6 Plaintiffs and other Class Members were paid all wages owed. *Id.* Second, Defendant asserts it
7 complied with all of its meal period and rest break obligations, and thus, Plaintiffs and other
8 Class Members were provided the opportunity to take all code-compliant meal periods and rest
9 breaks to which they were entitled. *Id.*

10 Third, Defendant asserts it complied with all of its reimbursement obligations, and
11 therefore, Plaintiffs and other Class Members were compensated for any and all business
12 expenses incurred. *Moon Decl.*, ¶ 7. Fourth, Defendant asserts it did not unlawfully withhold
13 any wages, including vacation wages, and thus, Plaintiffs and other Class Members suffered no
14 actual damage or harm from unlawful collection or receipt of wages. *Id.* Fifth, Defendant
15 asserts it did not willfully fail to pay any wages, and therefore, Plaintiffs and other Class
16 Members are not owed waiting time penalties for wages untimely paid during employment or at
17 termination. *Id.*; *See Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298
18 GHK (DTBx), 2012 WL 9506073, *5.

19 Sixth, Defendant asserts it complied with all wage statement requirements, and thus,
20 Plaintiffs and other Class Members suffered no actual damage or harm from inaccurate wage
21 statements. *See Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19, 2013) No. C 12-05860 CRB,
22 2013 WL 622032, at *10 (“A plaintiff must adequately plead an injury arising from an
23 employer’s failure to provide full and accurate wage statements, and the omission of the
24 required information alone is not sufficient.”); *Moon Decl.*, ¶ 8. Seventh, Defendant denies
25 derivative liability on these bases, asserting it did not engage in unfair business practices and
26 does not owe civil penalties under PAGA. *Id.* Last, Defendant asserts Plaintiffs’ claims are
27 individualized, and thus, improper for class treatment. *Id.*

1 **C. Discovery and Analysis**

2 The Parties mediated the Action with experienced, neutral mediator, Marc Feder, Esq., on
3 January 26, 2023. *Moon Decl.*, ¶ 9. In preparation for mediation, the Parties agreed to a
4 meaningful, informal exchange of data and documents. *Id.* The data and documents included, but
5 was not limited to, the time and corresponding payroll records of a statistically significant sample
6 of the putative Class; the employee handbooks in effect during the Class Period; the total number
7 of putative Class Members and Aggrieved Employees; and the total number of workweeks and pay
8 periods worked by the putative Class Members and Aggrieved Employees. *Id.* The data and
9 documents enabled Class Counsel and its expert to evaluate the alleged claims in light of relevant
10 case and statutory law. *Id.* In turn, this allowed Class Counsel to estimate the probability of class
11 certification, Plaintiffs’ success on the merits, and Defendant’s maximum monetary exposure for
12 all claims and penalties. *Id.*

13 **D. Settlement Negotiations**

14 The Parties mediated the Action with professional, neutral mediator, Marc Feder, Esq., on
15 January 26, 2023. *Moon Decl.*, ¶ 10. The Parties went into the mediation willing to settle the
16 dispute but also prepared to litigate their respective positions through trial and appeal if a
17 settlement were not reached. *Id.* Mediation was therefore adversarial and conducted at arm’s
18 length. *Id.* The Parties also went into the mediation willing to discuss and concede to the strengths
19 and weaknesses of Plaintiffs’ claims and Defendant’s defenses. *Id.* Mediation was resultingly
20 successful, and a settlement was reached. *Id.*

21 The material terms of the Settlement are set out in the Joint Stipulation of Class and PAGA
22 Action Settlement. A true and correct copy of the Settlement is attached to the *Declaration of*
23 *Kane Moon* as **Exhibit 1**. Class Counsel submitted the Settlement to the Labor and Workforce
24 Development Agency (“LWDA”) on August 24, 2023. A true and correct copy of the submission
25 confirmation email is attached the *Declaration of Kane Moon* as **Exhibit 2**. Class Counsel
26 provided the LWDA with an original notice of the alleged Labor Code violations before pursuing
27 the alleged PAGA cause of action on August 22, 2021. A true and correct copy of the notice is
28 attached to the *Declaration of Kane Moon* as **Exhibit 3**.

1 E. **Key Terms of the Settlement**

- 2 1. “Administrator” means ILYM Group, Inc., the neutral entity the Parties
3 have appointed to administer the Settlement. *Settlement*, ¶ 2.2.
- 4 2. “Administration Expenses Payment” means the amount the
5 Administrator will be paid from the Gross Settlement Amount to
6 reimburse its reasonable fees and expenses in accordance with the
7 Administrator’s “not to exceed” bid submitted to the Court in connection
8 with Preliminary Approval of the Settlement. *Settlement*, ¶ 2.3. The
9 Administration Expenses Payment is not to exceed \$10,000.00. A true
10 and correct copy of the Administrator bid is attached to the *Declaration*
11 of *Kane Moon* as **Exhibit 5**.
- 12 3. “Aggrieved Employee” means all non-exempt employees of Defendant
13 who worked in California from February 23, 2020, through March 31,
14 2023, including any employee employed through any staffing agency,
15 professional employer organization, or temporary employment agency
16 utilized by Defendant during the Class Period, which are identified as
17 Southbay Safety, Next Level Staffing, Core Staffing Solutions, Precise
18 Personnel, Randstad, the Baron HR, Fairway Staffing, Selective
19 Personnel, and Dynamic Staffing. *Settlement*, ¶¶ 2.4, 2.30.
- 20 4. “Class” means all non-exempt employees of Defendant who worked in
21 California from April 2, 2017, through March 31, 2023, including any
22 employee employed through any staffing agency, professional employer
23 organization, or temporary employment agency utilized by Defendant
24 during the Class Period, which are identified as Southbay Safety, Next
25 Level Staffing, Core Staffing Solutions, Precise Personnel, Randstad, the
26 Baron HR, Fairway Staffing, Selective Personnel, and Dynamic
27 Staffing.. *Settlement*, ¶¶ 2.5, 2.12.
- 28

- 1 5. “Class Counsel” means Jackson APC and Moon Law Group, PC.
2 *Settlement*, ¶ 2.6.
- 3 6. “Class Counsel Fees Payment” means the amount allocated to Class
4 Counsel for reimbursement of their reasonable fees incurred to prosecute
5 the Action. *Settlement*, ¶ 2.7. The Class Counsel Fees Payment is not to
6 exceed \$210,000.00, or one third of the Gross Settlement Amount.
7 *Settlement*, ¶ 3.2.2.
- 8 7. “Class Counsel Litigation Expenses Payment” mean the amount
9 allocated to Class Counsel for reimbursement of reasonable expenses
10 incurred to prosecute the Action. *Settlement*, ¶ 2.8. The Class Counsel
11 Litigation Expenses Payment is not to exceed \$20,000.00. *Settlement*, ¶
12 3.2.2. A true and correct copy of Class Counsel’s current litigation
13 expenses are attached to the *Declaration of Kane Moon* as **Exhibit 4** and
14 the *Declaration of Armond Jackson* as **Exhibit 1**.
- 15 8. “Class” or “Class Member” means all non-exempt employees of
16 Defendant who worked in California during the Class Period, including
17 any employee employed through any staffing agency, professional
18 employer organization, or temporary employment agency utilized by
19 Defendant during the Class Period, which are identified as Southbay
20 Safety, Next Level Staffing, Core Staffing Solutions, Precise Personnel,
21 Randstad, the Baron HR, Fairway Staffing, Selective Personnel, and
22 Dynamic Staffing. *Settlement*, ¶ 2.5.
- 23 9. “Class Notice” means the Court-approved notice of class action
24 settlement and hearing date for final court approval, to be mailed to
25 Class Members in English and Spanish. *Settlement*, ¶ 2.11.
- 26 10. “Class Representatives” means Armando Diaz-Garcia and Jose Elias
27 Barajas, the named Plaintiffs in the Action.. *Settlement*, ¶ 2.13.
- 28

11. “Class Representative Service Payments” means the payments to the Class Representatives for initiating and providing services in support of the Action and for their general release. *Settlement*, ¶ 2.14. The Class Representative Service Payments are not to exceed \$7,500.00 each. *Settlement*, ¶ 3.2.1.
12. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. *Settlement*, ¶ 2.18.
13. “Gross Settlement Amount” means \$630,000.00, or the total amount Defendant agrees to pay under the Settlement. *Settlement*, ¶ 2.22. The Gross Settlement Amount will be used to pay the Individual Class Payments, PAGA Settlement Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and Administration Expenses Payment. *Id.*
14. “Individual Class Payments” means the individual payments made to each Settlement Class Member from the Net Settlement Amount. *Settlement*, ¶ 2.23.
15. “Individual PAGA Payments” means the allocation of twenty-five percent of the PAGA Settlement Payment, to be paid to the Aggrieved Employees, pursuant to Labor Code section 2699, subdivision (i). *Settlement*, ¶ 2.24.
16. “LWDA” means the California Labor and Workforce Development Agency. *Settlement*, ¶ 2.25.
17. “LWDA PAGA Payment” means the allocation of seventy-five percent of the PAGA Settlement Payment, to be paid to the LWDA, pursuant to Labor Code section 2699, subdivision (i). *Settlement*, ¶ 2.26.

- 1 18. “Net Settlement Amount” means the Gross Settlement Amount less the
2 following payments, in the amounts approved by the Court: the PAGA
3 Settlement Payment, Class Representative Service Payments, Class
4 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and
5 Administration Expenses Payment. The Net Settlement Amount is to be
6 paid to Settlement Class Members as Individual Class Payments.
7 *Settlement*, ¶ 2.27.
- 8 19. “PAGA Settlement Payment” means \$60,000.000, the total amount of
9 PAGA civil penalties to be paid from the Gross Settlement Amount, and
10 which shall be allocated seventy-five percent to the LWDA (\$45,000.00)
11 (“LWDA PAGA Payment”) and twenty-five percent to the Aggrieved
12 Employees (\$15,000.00) (“Individual PAGA Payment”), in settlement of the
13 Released PAGA Claims. *Settlement*, ¶ 2.32.
- 14 20. “Released Class Claims” means all claims that were alleged, or
15 reasonably could have been alleged, in the Operative Complaint, and
16 ascertained in the course of the Action, that arose during the Class
17 Period. *Settlement*, ¶¶ 2.35, 5.2.
- 18 21. “Released PAGA Claims” all claims demands, rights, liabilities and
19 causes of action under the California Labor Code Private Attorneys
20 General Act that were alleged, or reasonably could have been alleged,
21 based on the claims asserted in the Operative Complaint or Plaintiffs’
22 respective Notices of Labor Code Violations and PAGA Penalties and
23 ascertained in the course of the Action arising during or with respect to
24 the PAGA Period. *Settlement*, ¶¶ 2.36, 5.3.
- 25
26
27
28

- 1 22. “Released Parties” means: Defendant and all of their past, present, and
2 future respective subsidiaries, dba’s, affiliates, parents, predecessors,
3 successors, investors, and their current and former employees, managing
4 agents, servants, consultants, agents, directors, officers, members,
5 independent contractors, representatives, insurers, reinsurers, attorneys;
6 and any staffing agency, professional employer organization, or
7 temporary employment agency utilized by Defendant during the Class
8 Period, including Southbay Safety, Next Level Staffing, Core Staffing
9 Solutions, Precise Personnel, Randstad, the Baron HR, Fairway Staffing,
10 Selective Personnel, and Dynamic Staffing, and any of their past,
11 present, and future respective subsidiaries, dba’s, affiliates, parents,
12 predecessors, successors, investors, and their current and former
13 employees, managing agents, servants, consultants, agents, directors,
14 officers, members, independent contractors, representatives, insurers,
15 reinsurers, attorney. *Settlement*, ¶ 2.37.
- 16 23. "Response Deadline" means sixty (60) calendar days after the
17 Administrator mails the Class Notice to the Class Members and
18 Aggrieved Employees and the last date on which Class Members may:
19 (a) fax, email or mail Requests for Exclusion from the Settlement, or (b)
20 fax, email or mail Objections to the Settlement. Class Members to whom
21 Notice Packets are resent after having been returned undeliverable to the
22 Administrator shall have an additional fourteen (14) calendar days
23 beyond the Response Deadline. *Settlement*, ¶ 2.39.
- 24 24. “Settlement Class Member” or “Participating Class Member” means a Class
25 Member who does not submit a valid and timely Request for Exclusion from
26 the Settlement. *Settlement*, ¶ 2.41.
- 27
- 28

1 **III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL**

2 **A. The Circumstances Of The Settlement Support Approval**

3 The circumstances of the Settlement support preliminary approval for the following
4 reasons: First, the law favors the settlement of lawsuits, particularly in class actions and other
5 complex cases. Here, the Settlement resolves a class and representative action. *See e.g., Neary*
6 *v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.

7 Second, the law favors a discretionary finding that a settlement is fair and reasonable
8 where the settlement terms indicate fairness and reasonableness on balance and in light of the
9 following relevant factors: (1) the strength of the plaintiff's case; (2) the risk, expense,
10 complexity, and likely duration of further litigation; (3) the risk of maintaining class action
11 status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed
12 and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
13 governmental participant; and (8) the reaction of the class members to the proposed settlement.
14 *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; *Kullar v. Foot Locker*
15 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The law also favors a discretionary finding that a
16 settlement is fair and reasonable where the settlement is within the ballpark of fairness and
17 reasonableness, and not depending on whether it contains an explicit statement of the maximum
18 theoretical recovery. *Id.* at 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
19 186 Cal.App.4th 399, 408-409 (holding that *Kullar* requires only an "understanding of the
20 amount that is in controversy and the realistic range of outcomes of the litigation.")

21 Here, the settlement terms indicate fairness and reasonableness on balance and in light
22 of the above relevant factors: Plaintiffs have strong claims supported by the time and
23 corresponding payroll records of the putative Class; the risk, expense, complexity, and likely
24 duration of further litigation is high; the amount offered in settlement was a founded
25 compromise reached with the facilitation of a highly experienced mediator; the amount of
26 discovery completed was exhaustive; Class and Defense Counsel are highly experienced in
27 employment law and class action litigation; and the Parties jointly reached the Settlement with
28 the understanding that it is within the ballpark of fairness and reasonableness.

1 Last, a presumption of fairness and reasonableness is triggered where the following factors
2 are present: (1) the investigation was sufficient to allow Class Counsel and the Court to act
3 intelligently; (2) the settlement was reached through arm's-length bargaining; (3) class counsel is
4 experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk, supra*, 48
5 Cal.App.4th at p. 1800. Here, the above factors are present, and therefore, the presumption is
6 triggered. The factors will be addressed in turn:

7 **1. The Investigation Was Sufficient To Allow Class Counsel And The**
8 **Court To Act Intelligently**

9 The investigation was sufficient to allow Class Counsel and the Court to act intelligently
10 for two main reasons: First, the investigation was comprised of an exhaustive data analysis. The
11 data analysis involved Class Counsel and its expert examining a statistically significant sample of
12 the time and corresponding payroll records of the Class. The time and corresponding payroll
13 records of the Class, in addition to other documents produced by Defendant, enabled Class
14 Counsel to determine the following information: the total number of shifts worked by all Class
15 Members; the average rate of pay of all Class Members; the average regular rate of pay of all
16 Class Members; the total amount of minimum, overtime and premium wages paid to all Class
17 Members; the total amount of reimbursements made to all Class Members; the total number of
18 off-the-clock and rounded hours worked by all Class Members; the total number of meal periods
19 and rest breaks that were missed, interrupted, or not taken by all Class Members; the total amount
20 of minimum, overtime and premium wages owed to all Class Members; the total amount of
21 reimbursements owed to all Class Members; the dates on which all Class Members were paid,
22 including the dates on which all terminated Class Members were paid their final paychecks; and
23 the accuracy and completeness of the wage statements issued to all Class Members. This
24 information enabled Class Counsel to approximate the maximum potential liability of Defendant
25 for all claims, in the event Plaintiffs prevailed on all claims at trial, including all claims for unpaid
26 minimum, overtime and premium wages, unreimbursed expenses, and statutory and civil
27 penalties. At mediation, Class Counsel used the maximum potential liability as the upper limit of a
28 fair and reasonable settlement.

1 Second, the investigation was comprised of a comprehensive evaluation of all factors
2 reasonably affecting full recovery of the maximum potential liability, including the evidence
3 supporting Plaintiff’s claims; the evidence supporting Defendant’s defenses; the risks, expenses
4 and length of further litigation, including the class certification process and appeal process; the
5 present state of the law as it applies to wage-and-hour class actions, particularly in light of
6 *Brinker*; the present value of the settlement versus the long wait necessitated by any potential
7 judgment in the Class’ favor; and the burdens of proof necessary to establish liability against
8 Defendant. This evaluation resulted in Class Counsel reasonably reducing Defendant’s maximum
9 potential liability, such that each claim was lowered in proportion to the presumed effect of any
10 applicable mitigating factors. For example, the estimated risk-inclusive exposure for the unpaid
11 wages claim due to rounding is \$10,937.20; for the unpaid wages claim due to off-the-clock work
12 is \$86,064.23, which reflects a 25% discount; for the meal period claim is \$112,572.38, which
13 reflects a 25% discount; for the rest break claim is \$72,282.92%, which reflects a 25% discount;
14 for the unreimbursed expenses claim is \$9,630.00, which reflects a 75% discount; and for all
15 derivative statutory and civil penalty claims is \$411,942.00 which reflects a 50% discount. The
16 total projected reasonable recovery was therefore \$703,428.73. *Moon Decl.*, ¶¶ 18-26. In the
17 Settlement, the Parties stipulate to a Gross Settlement Amount of \$630,000.00, which is 89.56%
18 of the total projected reasonable recovery. *Moon Decl.*, ¶ 26. From the Gross Settlement Amount,
19 Class Counsel has determined that each Class Member is eligible to receive an average net benefit
20 of \$2,977.10. *Id.*

21 These facts support the assertion that the investigation was sufficient to allow Class
22 Counsel and the Court to act intelligently, as they demonstrate the Gross Settlement Amount (1)
23 was reached in view of an upper limit, which was calculated by Class Counsel and its expert
24 according to data produced by Defendant; and (2) reflects a comprehensive comprise, which takes
25 into account all relevant risks and uncertainties. *See, e.g., Viceria v. Mistras Grp., Inc.* (N.D. Cal.
26 2016) No. 15-cv-02198-EMC, 2016 WL 5907869 (approving wage-and-hour class action
27 settlement amounting to 8.1% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d
28 454, 459 (approving settlement which represented “roughly one-sixth of the potential recovery.”)

1 2. **The Settlement Was Reached Through Arm’s-Length Negotiations**

2 The Settlement was undoubtedly reached through adversarial, non-collusive, and arms-
3 length negotiations between the Parties. The nature of these negotiations led the Parties to
4 present their arguments in a vigorous, yet forthright manner, acknowledge the strengths of all
5 opposing arguments, and reach a fair, balanced agreement in light thereof. For example,
6 Defendant asserted various defenses that posed a significant risk to Plaintiffs obtaining class
7 certification, proving Defendant’s liability, and proving Class Members’ damages; and thus,
8 Plaintiffs agreed to a settlement that reflected a significant discount in liability for the Class
9 claims. *Moon Decl.*, ¶¶ 18-26.

10 In fact, Defendant ultimately has to pay less under the Settlement than it would have had
11 to pay if Plaintiffs had achieved a judgment after trial, as the certification probabilities assigned
12 in this case far exceed the rate of certification in contested motions in California, based upon data
13 available through the California Courts website. *See*, Findings of the Study of California Class
14 Action Litigation, 2000-2006, available at [http://www.courts.ca.gov/documents/class-action-lit-](http://www.courts.ca.gov/documents/class-action-lit-study.pdf)
15 [study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf) (finding that only 21.4% of all class actions were certified either as part of a settlement
16 or as part of a contested certification motion).

17 The Ninth Circuit has noted: “the very essence of a settlement is compromise, ‘a yielding
18 of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Service*
19 *Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624. It has
20 further noted that settlement “is not to be judged against a hypothetical or speculative measure of
21 what might have been achieved by the negotiators.” *Id.* at p. 625. A court’s “intrusion upon what
22 is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be
23 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product
24 of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,
25 taken as a whole, is fair, reasonable, and adequate to all concerned.” *Id.* Here, the Settlement was
26 reached through compromise and reliable, independent negotiations, which, in practice,
27 amounted to arms-length bargaining.

1 **3. Class Counsel Are Not Only Experienced In Similar Litigation, But**
2 **Have Substantial Class Action Experience**

3 Class Counsel have substantial class action experience in both state and federal court and
4 with respect to all facets of class action litigation, including discovery, law and motions, trial,
5 appeals, arbitration, and mediation. *Moon Decl.* ¶¶ 30-41, *Jackson Decl.*, ¶¶ 7-10. In particular,
6 Class Counsel have litigated numerous wage and hour class actions on behalf of plaintiffs and
7 have been lead counsel or otherwise exercised significant case handling responsibilities in
8 numerous cases, resulting in millions of dollars in class action settlements. *Id.* Class Counsel are
9 therefore qualified to evaluate the strength of Plaintiffs’ claims, the strength of Defendant’s
10 defenses against certification and on the merits, and the fairness of the Settlement.

11 Further, their opinion that preliminary approval of the Settlement is in the best interest of
12 the Class in light of the significant risks of litigation is entitled to great weight. *See Kullar,*
13 *supra*, 168 Cal.App.4th at p. 129 (“The court undoubtedly should give considerable weight to the
14 competency and integrity of counsel and the involvement of a neutral mediator in assuring itself
15 that a settlement agreement represents an arm’s length transaction entered without self-dealing or
16 other potential misconduct.”)

17 **4. The Percentage Of Objectors Is Likely To Be Small**

18 The percentage of objectors to the Settlement is likely to be small. Further, in light of the
19 thorough investigation and experience of Class Counsel, and arm’s-length negotiations, which
20 support the Settlement, a positive reaction by Class Members in support of the Settlement is
21 likely. *See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010)
22 2010 WL 3715138, *6 (relatively few objections and requests for exclusion support approval);
23 *Kullar, supra*, 168 Cal.App.4th at p. 128 (among the factors to be considered in evaluating a
24 class action settlement include “the reaction of the class members to the proposed settlement.”)

25 The foregoing indicates that the Settlement is comprised of all factors which trigger a
26 presumption of fairness and reasonableness. In addition, it indicates that other discretionary
27 factors which the court considers in making a finding of fairness and reasonableness are also
28 present. On these bases, the Settlement merits preliminary approval.

1 **B. The Terms Of The Settlement Are Fair And Reasonable**

2 The terms of the Settlement, including the Class Counsel Fees Payment, Class Counsel
3 Litigation Expenses Payment, and Class Representative Service Payments, are fair and reasonable.
4 The Settlement provides that the Class Counsel Fees Payment is not to exceed one-third of the
5 Gross Settlement Amount, or \$210,000.00; the Class Counsel Litigation Expenses Payment is not
6 to exceed \$20,000.00; and the Class Representative Service Payments are not to exceed 7,500.00.

7 **1. The Class Counsel Fees Payment Is Fair And Reasonable**

8 The Class Counsel Fees Payment is fair and reasonable because the fees (1) were
9 calculated using the common fund doctrine and are in line with leading treatises on awards
10 calculated using the common fund doctrine, (2) comport with the fee-shifting provision set out
11 under Labor Code sections 2698, *et seq.*; and (3) reflect Class Counsel's significant experience,
12 reputation, and ability in class action settlements. "In general, questions [about] whether a
13 settlement [is] fair and reasonable, whether certification of the class [is] proper, and whether the
14 attorneys' fee award [is] proper are matters addressed to the trial court's broad discretion."
15 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235].

16 a) **The Class Counsel Fees Payment Was Calculated Using The**
17 **Common Fund Doctrine And Is In Line With Leading Treatises**
18 **On Awards Calculated Using The Common Fund Doctrine**

19 (i) *The Common Fund Doctrine Is Applicable In The Context Of*
20 *Class Action Settlements*

21 The common fund doctrine provides that, when a number of persons are entitled in
22 common to a specific fund, and an action brought by a plaintiff for the benefit of all results in
23 the creation or preservation of that fund, the plaintiff may be awarded attorneys' fees and costs
24 out of the fund. *Progressive West Ins. Co. v. Superior Court* (2005) 135 Cal.App.4th 263, 273.
25 The common fund doctrine is therefore applicable in the context of class action settlements, as
26 class action settlements produce a specific fund to which a number of persons are entitled in
27 common and are the product of an action brought by a plaintiff for the benefit of a class. *See*
28 *Petrovic v. Amoco Oil Co.* (8th Cir. 1999) 200 F.3d 1140, 1153.

(ii) *The Common Fund Doctrine Is Favorable In The Context Of
Class Action Settlements*

The common fund doctrine was recognized in *Quinn v. State of California* (1995) 15 Cal.3d 162 as favorable in the context of class action settlements. In *Quinn*, the California Supreme Court specified that the common fund doctrine offsets those who “expend attorneys’ fees in winning a suit which creates a fund from which others derive benefits” by requiring “those passive beneficiaries to bear a fair share of the litigation costs.” *Id.* at 167. In *Quinn*, the California Supreme Court further detailed that the common fund doctrine promotes “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; and encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly...compensated should his efforts be successful.” *Id.*

Even before *Quinn*, California Courts routinely used the common fund doctrine to determine the award of attorneys’ fees. *See, e.g., In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79; *see also City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110 (recognizing that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.”); *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769 (finding the common fund doctrine attempts to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”)

The common fund doctrine is also recognized as favorable in the context of class action settlements when compared to the alternative lodestar approach, which often involves wading through voluminous and, oftentimes, indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities*

1 *Litigation* (N.D. Cal. 1989) 723 F.Supp.1373: “This court is compelled to ask, ‘Is this process
2 necessary?’ Under a cost-benefit analysis, the answer would be a resounding, ‘No!’ Not only
3 do the *Lindy Kerr-Johnson* analyses consume an undue amount of court time with little
4 resulting advantage to anyone, but in fact, it may be to the detriment of the Class Members.”
5 In contrast to the lodestar approach, the common fund doctrine aligns with the interests of
6 Class Counsel and encourages efficient resolution of the litigation by providing an incentive
7 for early, yet reasonable, settlement; and reduces the demands on judicial resources. *Id.* at pp.
8 1378-79.

9 (iii) *The Class Counsel Fees Payment Is In Line With Leading*
10 *Treatises On Awards Calculated Using the Common Fund*
11 *Doctrine*

12 The Class Counsel Fees Payment is in line with leading treatises, which concur that
13 “[n]o general rule can be articulated on what is a reasonable percentage of a common fund.
14 Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in
15 order to assure that the fees do not consume a disproportionate part of the recovery obtained
16 for the class, although somewhat larger percentages are not unprecedented. *See Conte &*
17 *Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03. Thus, fees that are fifty percent of the
18 fund are typically considered the upper limit, with thirty to forty percent commonly awarded
19 in cases where the settlement is relatively small. *Id.*; *see also Van Vranken v. Atlantic*
20 *Richfield Company* (N.D. Cal. 1995) 901 F.Supp. 294 (stating that cases where 30-50 percent
21 was awarded involved “smaller” settlement funds of under \$10 million.)

22 Here, the Class Counsel Fees Payment equals one-third of the Gross Settlement
23 Amount, or \$210,000.00, which is in line with the prevailing guidelines established in
24 California case law and academic literature and is consistent with prior awards approved in
25 California. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 (“Empirical studies
26 show that, regardless of whether the percentage method or the lodestar method is used, fee
27 awards in class actions average around one-third of the recovery.”)

1 b) **The Class Counsel Fees Payment Comports With The Fee-**
2 **Shifting Provision Set Out Under Labor Code Sections 2698, Et**
3 **Seq.**

4 The instant matter arose, in part, under *Labor Code* sections 2698, *et seq.* *Labor Code*
5 section 2699(g) states: “any employee who prevails in any action shall be entitled to an award
6 of reasonable attorneys’ fees and costs.” *Labor Code* § 2699(g). This fee-shifting provision
7 reflects the understanding that counsel must accept significant risk of substantial expenses and
8 consumption of time and other resources in litigating a PAGA action, and thus, that it is
9 reasonable for counsel to recover reasonable fees and costs if successful in litigating the same.
10 It is notable that the reasonableness of an award is unaffected when the fees are larger than the
11 total recovery for the PAGA members at the conclusion of the case because once counsel
12 undertake the litigation, they are committed to pursuing the case to its conclusion, placing the
13 fiduciary duty to the Aggrieved Employees ahead of all other concerns.

14 Here, the prosecution of the action involved significant financial risk to Class Counsel,
15 as they undertook this matter solely on a contingency basis, with no guarantee of recovery.
16 *Moon Decl.*, ¶¶ 44, 46. The Class Counsel Fees Payment therefore comports with the fee-
17 shifting provision set out under *Labor Code* sections 2699, *et. seq.*

18 c) **The Class Counsel Fees Payment Reflects Class Counsel’s**
19 **Significant Experience, Reputation, and Ability In Class Action**
20 **Settlements**

21 Here, the experience, reputation, and ability of Class Counsel support the Class
22 Counsel Fees Payment, as fees are generally awarded with regard to and commensurate with
23 the experience, reputation, and skill of counsel, and Class Counsel have significant and
24 specific experience in litigating class and representative actions on behalf of employees. *See*
25 *Moon Decl.* and *Jackson Decl.* Moreover, Class Counsel have been involved as lead or co-
26 counsel in a multitude of class and representative actions resulting in beneficial results to class
27 members in California. *Id.* This experience has familiarized Class Counsel with this rapidly
28 evolving area of law, such that they possess significant expertise in this narrow field. *Id.*

1 2. **The Class Counsel Litigation Expenses Payment Is Fair And**
2 **Reasonable**

3 The Class Counsel Litigation Expenses Payment is fair and reasonable because class
4 counsel are generally entitled to recover any out-of-pocket litigation costs they reasonably incur in
5 investigating, prosecuting and settling a class and representative action, and the requested
6 Litigation Expenses reflect such costs. *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.
7 Here, Class Counsel has reasonably and actually incurred \$14,833.19 in litigation costs at this time,
8 and the Parties have agreed to reimbursement of up to \$20,000.00 under the Settlement. *Moon*
9 *Decl.*, Ex. 4, *Jackson Decl.*, Ex. 1.

10 3. **The Class Representative Service Payments Are Fair And Reasonable**

11 The Class Representative Service Payments are fair and reasonable, as named plaintiffs in
12 class action lawsuits “are eligible for reasonable incentive payments to compensate them for the
13 expense or risk they have incurred in conferring a benefit on other members of the class,” and the
14 Service Payments here compensate the named Plaintiffs for the benefit they conferred on the
15 Class. *Munoz, supra*, 86 Cal.App.4th at 412; *Clark v. Am. Residential Servs. LLC* (2009) 175
16 Cal.App.4th 785, 806; *See In re Cont'l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571 (“Since
17 without a named plaintiff there can be no class action, such compensation as may be necessary to
18 induce him to participate in the suit could be thought the equivalent of the lawyers’ nonlegal but
19 essential case-specific expenses, such as long-distance phone calls, which are reimbursable”).)

20 Courts routinely grant approval of class action settlement agreements containing
21 enhancements for the class representatives, which are necessary to provide incentive to represent
22 the class, and are appropriate given the benefit the class representatives help to bring about for
23 the class. *See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59. “[C]riteria
24 courts may consider in determining whether to make an incentive award include: 1) the risk to
25 the class representative in commencing suit, both financial and otherwise; 2) the notoriety and
26 personal difficulties encountered by the class representative; 3) the amount of time and effort
27 spent by the class representative; 4) the duration of the litigation; and 5) the personal benefit (or
28 lack thereof) enjoyed by the class representative as a result of the litigation. *In re Cellphone Fee*

1 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-95 (holding the trial court did not abuse
2 its discretion in awarding enhancements of \$10,000.00 to each of the four named plaintiffs.)

3 Incentive awards are particularly important to plaintiffs in wage and hour cases because
4 they promote the important public policies underlying the wage and hour laws. This strong policy
5 is codified in *Labor Code* section 90.5. Nonetheless, the California Supreme Court has
6 recognized that “retaliation against employees for asserting statutory rights under the *Labor Code*
7 is widespread,” despite anti-retaliation statutes designed to protect employees. *Gentry v. Super.*
8 *Ct.* (2007) 42 Cal.4th 443, 460-61. In this context, class representatives should be rewarded for
9 assuming the risk of retaliation for the sake of Class Members. *See Frank v. Eastman Kodak Co.*
10 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

11 Here, subject to the Court’s approval, Defendant agreed to two Service Payments not to
12 exceed \$15,000.00, or \$7,500.00 to Plaintiff Armando Diaz-Garcia and \$7,500.00 to Plaintiff
13 Jose Elias Barajas. Class Counsel represent that Plaintiffs devoted a great deal of time and work
14 assisting counsel in the case and communicated with Class Counsel frequently for litigation and
15 to prepare for mediation. *Moon Decl.*, ¶¶ 48-51. This amount is particularly reasonable in light of
16 the substantial benefits Plaintiffs generated for all Class Members. *Moon Decl.*, ¶ 26. Indeed,
17 when compared with the amounts awarded in typical class action cases, the amount requested
18 here is particularly reasonable. A 2006 study examining the average incentive award given to
19 class action plaintiffs from 1993 to 2002 found that the “average award per class
20 representative was \$15,992 and the median award per class representative was \$4,357.”
21 Theodore Eisenberg & Jeffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An*
22 *Empirical Study* (2006) 53 UCLA L. Rev. 1303, 1308. That same study found that named
23 plaintiffs in employment discrimination class actions received an average award of \$69,850
24 and a median award of \$31,081, while named plaintiffs in other employment class actions
25 received an average award of \$12,121 and a median award of \$13,059. *Id.* at p. 1334. The
26 authors of the study found that higher awards in employment cases reflected the “courts’ wish
27 to make representative plaintiffs whole by compensating them for the high costs of their
28 service to the class, including risks of stigmatization or retaliation on the job.” *Id.* at p. 1308.

1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 **A. Legal Standard**

3 For the reasons set forth below, and for purposes of settlement, the Class satisfies the
4 prerequisites for certification under the *California Code of Civil Procedure* section 382. Section
5 382 provides: “when the question is one of a common or general interest, of many persons, or
6 when the parties are numerous, and it is impracticable to bring them all before the court, one or
7 more may sue or defend for the benefit of all.” Code Civ. Proc., § 382.

8 There are two requirements to section 382: “(1) There must be an ascertainable class; and
9 (2) there must be a well-defined community of interest in the questions of law and fact involved
10 affecting the parties to be represented.” *Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704. The
11 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
12 community-of-interest requirement embodies three factors: “(1) predominant questions of law or
13 fact; (2) class representatives with claims or defenses typical of the class; and (3) class
14 representatives who can adequately represent the class.” *Richmond v. Dart Indus., Inc.*, (1981) 29
15 Cal. 3d 462, 470.

16 **B. The Criteria For Class Certification Are Satisfied**

17 When determining whether a class is ascertainable, California courts focus on the
18 following three factors: (1) the class definition, (2) the size of the class, and (3) the means of
19 identifying Class Members. *See Miller v. Woods* (1983) 148 Cal. App. 3d 862, 873.

20 **1. The Class Is Ascertainable and Identifiable**

21 Here, the Class is ascertainable because its definition, which is precise and comprised of
22 objective criteria, renders Class Members identifiable and certain. The objective criteria includes
23 the nature of the position held by the class member, i.e., non-exempt; the time period during
24 which the class member held the position, i.e., from April 2, 2017, through March 31, 2023; the
25 state in which the class member worked, i.e., in California; and the employer of the class
26 member, i.e., Defendant. In cases where a class is defined by such precise, objective terms,
27 Courts have found the class to be ascertainable and identifiable. *See e.g., Wilner v. Sunset Life*
28 *Ins. Co.*, (2000) 78 Cal.App.4th 952, 959-60.

1 **2. The Class Is Numerous**

2 Here, the Class is numerous because the class consists of an estimated 107 Class
3 Members. “The requirement of *California Code of Civil Procedure* section 382 that there be
4 ‘many’ parties to a class action suit is indefinite and has been construed liberally.” *Rose v. City of*
5 *Hayward*, (1981) 126 Cal.App.3d 926, 934. “Where a question is of common interest to ‘many’
6 persons, an action may be maintained as a class action even where the parties are numerous, and
7 it is in fact practicable to join them all.” *Id.* “No set number is required as a matter of law for the
8 maintenance of a class action.” *Id.* “Thus, our Supreme Court has upheld a class representing the
9 10 beneficiaries of a trust in an action for removal of the trustees.” *Id.*, citing *Bowles v. Super.*
10 *Ct.* (1955) 44 Cal.2d 574; *Collins v. Rocha* (1972) 7 Cal.3d 232 (upholding a 35-member class.)

11 **3. There Is A Well-Defined Community Of Interest**

12 There is a well-defined community of interest where (1) there are common questions of
13 law and fact that predominate over individual issues; (2) the class representative has claims or
14 defenses typical of the class; and (3) the class representative adequately represents the class.
15 *Dunk, supra*, 48 Cal. App. 4th at 1806. This showing indicates whether a proposed class is
16 sufficiently cohesive to warrant adjudication by representation. *See, e.g., Clothesrigger, Inc. v.*
17 *GTE Corp.* (1987) 191 Cal.App.3d 605.

18 Here, there are common questions of law and fact that predominate over individual issues.
19 The questions of law and fact center around whether Defendant had legally compliant policies
20 and practices to pay employees all wages owed; whether Defendant had legally compliant
21 policies and practices to provide employees with meal periods; whether Defendant had legally
22 compliant policies and practices authorizing and permitting its employees to take rest breaks;
23 whether Defendant had legally compliant policies and practices to ensure reimbursement of all
24 necessary business expenses incurred; whether Defendant timely paid final wages to employees;
25 and whether Defendant had legally compliant wage statements. The Operative Complaint
26 establishes that all Class Members would need to answer these same questions of law and fact in
27 order to prevail on their injuries; that all Class Members have suffered from and seek redress for
28 the same injuries; and that their legal remedies would be identical in the event they prevailed.

1 Here also, the Class Representatives have claims typical of the Class. A class
2 representative has claims typical of the class when his or her claims arise from the same event,
3 practice or course of conduct, and if the claims rest on the same legal theories. *Classen v. Weller*
4 (1983) 145 Cal.App.3d 27, 47 (“The only requirements are that common questions of law and
5 fact predominate and that the class representative be similarly situated” vis-à-vis the class.”) This
6 is precisely the case here. Like all other Class Members, Plaintiffs are former non-exempt
7 employees of Defendant; Plaintiffs worked for Defendant in California; Plaintiffs typically
8 worked five days per workweek and eight hours per workday; and Plaintiffs were subject to the
9 employment policies and practices of Defendant, which are the basis of their claims and legal
10 theories in support thereof. The Class Members are also all non-exempt employees of Defendant,
11 who worked for Defendant in California, who worked the same average workday and workweek
12 as Plaintiffs and who were also subject to the same policies and practices as Plaintiffs, which are
13 also the basis of their claims and alleged legal theories. The Class Representatives therefore have
14 identical claims to those of the Class.

15 Here, last, the Class Representatives adequately represent the Class. The class
16 representative adequately represents the class where he or she is represented by counsel qualified
17 to conduct the pending litigation; and his or her interests are not antagonistic to those of the
18 class. *McGhee v. Bank of America*, (1976) 60 Cal.App.3d 442, 451. Plaintiffs retained counsel
19 with extensive experience in prosecuting complex class actions, including similar class actions
20 that previously settled. *Moon Decl.*, ¶¶ 30-41, *Jackson Decl.*, ¶¶ 7-10. With their combined
21 experience, Class Counsel are unquestionably “qualified, experienced and generally able to
22 conduct the proposed litigation.” *Miller v. Woods* (1983) 148 Cal.App.3d 862, 875. In addition,
23 Plaintiffs have no conflict of interest with any Class Members, and Plaintiffs have, with counsel,
24 litigated this case and diligently reviewed the Settlement terms, showing their dedication.
25 Plaintiffs’ willingness to serve as representatives demonstrates their serious commitment to
26 bringing about the best results possible for the Class. *McGhee, supra*, 60 Cal.App.3d at p. 451.

1 **4. A Class Action Is Superior To A Multiplicity Of Litigation**

2 If a Court finds all other requirements for class certification are satisfied, the Court must
3 finally determine that a class action is superior to alternative means for the fair and efficient
4 adjudication of the litigation. By consolidating many potential individual actions into a single
5 proceeding, this Court’s use of the class action device enables it to manage this litigation in a
6 manner that serves the economics of time, effort and expense for the litigants and the judicial
7 system. Absent class treatment, similarly situated employees with small but nevertheless
8 meritorious claims for damages would, as a practical matter, have no means of redress because of
9 the time, effort and expense required to prosecute individual actions. *Gentry v. Super. Ct.*, (2007)
10 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.*, (9th Cir. 2013) 716 F.3d 510, 515. Moreover, in
11 the context of settlement, the superiority concerns are essentially non-existent.

12 **V. THE CLASS NOTICE MERITS PRELIMINARY APPROVAL**

13 **A. The Class Notice Satisfies State Law**

14 Notice requirements are set forth in the *California Rules of Court* rules 3.766 (e) and (f).
15 California law vests the Court with broad discretion to fix an appropriate notice program. *Cartt v.*
16 *Super Ct.* (1975) 50 Cal.App.3d 960, 973-74. There is no statutory or Due Process requirement
17 that all Class Members receive actual notice, but in this matter, the Class Members will receive
18 direct mailed notice. As the Court of Appeals has explained, “[t]he notice given should have a
19 reasonable chance of reaching a substantial percentage of the Class Members” *Id.* at p. 974.
20 Here, the Class Notice will be provided by direct mailing, the best possible form of notice under
21 the circumstances.

22 **B. The Class Notice is Accurate and Informative**

23 The Class Notice, in the form attached to the Settlement as Exhibit A, should be approved
24 for dissemination to the Class Members and Aggrieved Employees. The Notice informs the Class
25 Members of the terms of the Settlement; of their rights to be excluded from the Settlement; and
26 of their rights to object to the Settlement and be heard at the Final Approval Hearing.
27 Accordingly, the proposed Class Notice meets all requirements of *California Rules of Court* rule
28 3.769(f).

1 The proposed Class Notice also fulfills the requirement of neutrality in class notices.
2 Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39. It summarizes the proceedings
3 to date and the terms and conditions of the Settlement in an informative and coherent manner;
4 makes clear that the Settlement does not constitute an admission of liability by the Defendant,
5 who denies all liability; and recognizes that this Court has not ruled on the merits of the
6 Action. It also states that the final settlement approval decision has not yet been made.
7 Accordingly, the proposed Class Notice complies with the standards of fairness, completeness,
8 and neutrality required of a combined settlement-certification class notice.

9 **VI. CONCLUSION**

10 For the foregoing reasons, Plaintiffs respectfully request the Court to grant preliminary
11 approval of the Settlement and set a Final Approval Hearing.

12
13
14 Dated: September 7, 2023

Respectfully submitted,

JACKSON, APC

15
16 By: /s/ Armond Jackson
Armond Jackson, Esq.
Attorneys for Plaintiff, Armando Diaz-Garcia

17
18
19 Dated: September 7, 2023

MOON LAW GROUP, PC

20
21 By: 
Kane Moon, Esq.
Allen Feghali, Esq.
Jacquelyne VanEmmerik, Esq.
Attorneys for Plaintiff, Jose Elias Barajas

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not
4 a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los Angeles,
California 90017. On **September 7, 2023**, I served the foregoing document described as:

5 **PLAINTIFFS ARMANDO DIAZ-GARCIA AND JOSE ELIAS BARAJAS' NOTICE OF MOTION**
6 **AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION**
7 **SETTLEMENT**

8 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as
follows:

9 Christine D. Baran
10 Andrew C. Crane
11 Samantha E. Cardarelli
12 **FISHER & PHILLIPS LLP**
13 2050 Main Street, Suite 1000
14 Irvine, California 92614
15 cbaran@fisherphillips.com
16 acrane@fisherphillips.com
17 scardarelli@fisherphillips.com

18 *Attorneys for Defendant Awesome Products,*
19 *Inc.*

Robert Mackey (SBN 125961)
THE LAW OFFICES OF ROBERT
MACKEY
16320 Murphy Road
Sonora, CA 95370
Email: bobmackeyesq@aol.com

Attorneys for Defendant Awesome
Products, Inc.

20 Armond M. Jackson
21 **JACKSON APC**
22 2 Venture Plaza, Suite 240
23 Irvine, California 92618
24 Email: ajackson@jacksonapc.com

25 *Attorney for Plaintiff, Armando Diaz-Garcia*

26 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
27 envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the
28 firm's practice of collection and processing correspondence for mailing. Under that practice it
would be deposited with U.S. postal service on that same day with postage thereon fully
prepaid at Los Angeles, California in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed this, **September 7, 2023** at Los Angeles, California.

Janelle Jickain
Type or Print Name

/s/ Janelle Jickain
Signature