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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12 **(UNLIMITED JURISDICTION)**

13 MICHAEL M. CANTRELL, on behalf of
14 himself, all others similarly situated, the general
15 public, and as an “aggrieved employee” on
16 behalf of other “aggrieved employees” under the
Labor Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 CONCRETE PLACEMENT, INC., a California
20 corporation; COLLIN FLEMING; and DOES 1–
21 50, inclusive,

22 *Defendants.*
23

Case No. 30-2021-01225534-CU-OE-CXC

**PLAINTIFF MICHAEL M.
CANTRELL’S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
RESERVATION NO.: 73918762**

Hearing Date: 2/24/2023
Hearing Time: 9:00 a.m.
Hearing Dept.: CX104, The Honorable
William D. Cluster

Action filed: October 07, 2021
Trial Date: None set



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Michael M. Cantrell (“Plaintiff”) submits this memorandum of points and
5 authorities in support of his unopposed motion for preliminary approval of the Class Action and
6 PAGA Settlement Agreement and Class Notice (the “Settlement”)², which provides for a Gross
7 Settlement Amount (“GSA”) of \$1,000,000.00 in compromise of all disputed claims on behalf of
8 all persons employed by Defendants Concrete Placement, Inc. and Collin Fleming (collectively
9 “Defendants”) in California and classified as hourly, non-exempt who worked for Defendants
10 during the period beginning October 8, 2017 and ending on the date of the court order granting
11 preliminary approval of the Settlement (the “Class Period”). Through this Motion, Plaintiff
12 respectfully requests for this Court to (1) provisionally certify the below-defined Class for
13 settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the
14 Settlement; (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint David Spivak
15 of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel;
16 (5) approve the proposed notice procedures and related forms; and (6) schedule a final approval
17 hearing.

18 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
19 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
20 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
21 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
22 Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the proposed
23 notice procedures, and related forms, fully comport with due process and adequately apprise
24 Class Members of their rights; and (6) a final approval hearing must be scheduled to allow
25 Settlement Class members an opportunity to be heard regarding the Settlement and to give it
26 finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s Motion
27 in its entirety and preliminarily approve the Settlement.

28 ///

///

///

26 _____
27 ² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”),
28 which is submitted herewith under a separate cover.



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1 **II. BACKGROUND**

2 Defendants are Concrete Placement, Inc. and Collin Fleming, one of its managers. DS, ¶
3 1. Defendants employed Plaintiff as an hourly, non-exempt heavy equipment operator from
4 about May 15, 2014 until February 19, 2021. DS, ¶ 4.

5 **A. The Claims and Procedural History**

6 On August 18, 2021, Plaintiff notified Defendants and the California Labor and
7 Workforce Development Agency (“LWDA”) in writing, pursuant to the California Private
8 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of
9 alleged Labor Code violations committed by Defendants. DS, ¶ 5, Ex. 2.

10 On October 07, 2021, Plaintiff filed a Class Action Complaint in the Orange County
11 Superior Court, Case No. 30-2021-01225534-CU-OE-CXC, against Defendants on behalf of
12 himself and others similarly situated, alleging causes of action on a class-wide basis for: (1)
13 Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and
14 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide
15 Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198
16 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time
17 Penalties (Lab. Code §§ 201, 202, and 203); and (7) Unfair Competition (Bus. & Prof. Code §§
18 17200, *et seq.*). DS, ¶ 6, Ex. 3. On October 22, 2021, Plaintiff filed his First Amended Complaint
19 adding a claim under PAGA. DS, ¶ 6, Ex. 4. On December 27, 2021, Defendants filed an answer
20 to Plaintiff’s First Amended Complaint. DS, ¶ 6, Ex. 5. On October 25, 2022, Plaintiff filed an
21 Amendment to Complaint Re: Fictitious Names for Defendant Doe 1, adding Collin Fleming as
22 a named Defendant. DS, ¶ 6, Ex. 6. On November 9, 2022, Plaintiff filed his Second Amended
23 Complaint, adding Collin Fleming as a Defendant, adding a cause of action for Failure to Pay All
24 Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 204, 510, 558,
25 1194, 1197, 1197.1 and 1198) on behalf of Plaintiff and the Class, and adding claims against
26 Fleming under Labor Code § 558.1 to Plaintiff’s First, Third, Fifth and Sixth Causes of Action.
27 DS, ¶ 6, Ex. 7. On December 16, 2022, Defendants filed an answer to Plaintiff’s Second Amended
28 Complaint. DS, ¶ 6, Ex. 8. Defendants deny all of Plaintiff’s allegations and strongly contend that
their wage and hour policies, practices and procedures are fully compliant with all applicable
laws. DS, ¶ 6.

29 **B. Mediation**

30 The Parties thereafter engaged in an informal, voluntary exchange of information in the



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1 context of privileged settlement discussions to facilitate an early mediation. Class Counsel
2 contacted 21 putative class members and interviewed Plaintiff and three putative class members
3 in preparing for mediation. Defendants produced Plaintiff's personnel file, including payroll
4 records and time records, a random 20% sampling of time records for the putative class, a
5 corresponding random 20% sample of the employees' itemized wage statements, and all
6 handbooks and wage and hour policies that were in effect during the class period. DS, ¶ 7.

7 On June 14, 2022, following much of the foregoing informal discovery and exchange of
8 information, the Parties participated in a mediation session presided over by Mediator Michael
9 Young, an experienced class action mediator. During the mediation, the Parties had a full day of
10 productive negotiations and reached agreement on a class-wide settlement during the second
11 mediation session. During the mediation sessions, each side, represented by their respective
12 counsel, recognized the risk of an adverse result in the Action. Although the case did not settle at
13 mediation, the Parties continued to negotiate with the help of Mr. Young and, after further
14 discovery, agreed to settle the Action and all other matters covered by the Settlement pursuant to
15 the terms and conditions of the Settlement. DS, ¶ 8.

16 **C. Defendants' Financial Condition**

17 At the mediation, it became clear that that Defendants had insufficient resources to cover
18 the full extent of liability. DS ¶ 9. As part of the settlement negotiations, Defendant Concrete
19 Placement, Inc. disclosed copies of its federal tax returns for 2018, 2019 and 2020, in addition to
20 their balance sheets, cash flow sheets and Profit and Loss information for 2019, 2020 and 2021.
21 Defendant Concrete Placement, Inc. also provided its redacted American Express bank statements
22 for January through December 2021.³ *Id.* Plaintiff's Counsel has reviewed the financial records.
23 *Id.* The information provided was sufficient to demonstrate the financial condition of the company
24 and its owners. Based on such records, Plaintiff, on his own behalf and on behalf of the Class
25 Members, has agreed to settle the lawsuit on the terms set forth in the Settlement. *Id.*

26 **III. OVERVIEW OF THE SETTLEMENT**

27 **A. Settlement Class Definition**

28 The Settlement defines the class as all persons employed by Defendants Concrete
Placement, Inc. and Collin Fleming (collectively "Defendants") in California and
classified as hourly, non-exempt who worked for Defendants during the period beginning
October 8, 2017 and ending on the date of the court order granting preliminary approval
of the Settlement (the "Class Period").

³ Defendants will produce their financial records to the court for review upon request.

1 **B. Monetary Terms**

2 “Gross Settlement Amount” means the sum of \$1,000,000.00, to be paid by Defendants
3 in full resolution of all Released Class Claims, Released PAGA Claims, and the Action, which is
4 inclusive of the Individual Class Payments, the Individual PAGA Payments, the LWDA PAGA
5 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the
6 Class Representative Service Payment, and the Administrator’s Expenses. Defendants will pay
7 the Gross Settlement Amount in installment payments, outlined further in paragraph 4.3 of the
8 Settlement. Settlement ¶ 1.22.

9 The Settlement has an escalator clause. Defendants represent that the number of Class
10 Members as of November 7, 2022 was 111 and the total workweeks during the Class period was
11 11,332. Defendants also represent that the number of Aggrieved Employees as of November 7,
12 2022 was 72 and the total PAGA Pay Periods was 4,839. If, as of the Preliminary Approval Date,
13 the number of workweeks during the Class Period is 10% or 1,134 workweeks higher than 11,332,
14 then Defendants shall pay a pro-rata increase in the Gross Settlement Amount equal to the
15 percentage increase in workweeks above 11,332. For example, if the number of workweeks
16 during the Class Period increases by 12%, then Plaintiff shall request a 2% increase to the Gross
17 Settlement amount. The Defendants and the Settlement Administrator will disclose the number
18 of workweeks during the Class Period following issuance of the preliminary approval order and
19 before the Administrator sends notice of the Settlement to the Class Members. Settlement ¶ 9.

20 **C. Timing of Payments**

21 Except as otherwise provided by paragraph 9 of the Settlement, Defendants promise to
22 pay \$1,000,000.00 and no more as the Gross Settlement Amount and to separately pay any and
23 all employer-side payroll taxes owed on the Wage Portions of the Individual Class Payments.
24 Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior
25 to the deadline stated in paragraph 4.3 of the Settlement. The Administrator will disburse the
26 entire Gross Settlement Amount without asking or requiring Participating Class Members or
27 Aggrieved Employees to submit any claim as a condition of payment. None of the Gross
28 Settlement Amount will revert to Defendants. Settlement ¶ 3.1.

 The Administrator will make and deduct the following payments from the Gross
Settlement Amount, in the amounts specified by the Court in the Final Approval:

1. **To Plaintiff:** Class Representative Service Payment to the Class
Representative of not more than \$20,000.00 (in addition to any Individual Class Payment and



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any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. Settlement ¶ 3.2.1.

2. **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be \$333,333.00 and a Class Counsel Litigation Expenses Payment of not more than \$12,500.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments. Settlement ¶ 3.2.2.

3. **To the Administrator:** An Administrator Expenses Payment not to exceed \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000.00, the Administrator will retain the remainder in the Net Settlement Amount. Settlement ¶ 3.2.3.

4. **To Each Participating Class Member:** An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked



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by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's workweeks. Tax Allocation of Individual Class Payments. 33.33% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual Class Payment remaining will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. Settlement ¶ 3.2.4.

5. **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00) allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Settlement ¶ 3.1.-3.2.5.2

Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator in three installment payments as follows:

1) **The First Payment**, in the amount of \$400,000.00, shall be paid no later than 30 days after entry of the order granting final approval, if no objection to the settlement is made. If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days

1 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no
2 later than 30 days after the final judgment becomes final and is no longer subject to appeal;

3 2) **The Second Payment**, in the amount of \$300,000.00 shall be paid no later than
4 180 days after the First Payment is due; and

5 3) **The Third Payment**, in the amount of \$300,000.00 shall be paid no later than
6 365 days after the First Payment is due.

7 Settlement ¶ 4.3.

8 The Administrator shall distribute each of the installment payments pro rata within 15
9 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
10 PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
11 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
12 expenses. Settlement ¶ 4.4.

13 **D. Calculation of Settlement Shares**

14 "Individual Class Payment" means the Participating Class Member's pro rata share of the
15 Net Settlement Amount calculated according to the number of workweeks worked during the
16 Class Period. Settlement ¶ 1.23.

17 "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of
18 the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA
19 Period. Settlement ¶ 1.24.

20 "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA
21 under Labor Code section 2699, subd. (i). Settlement ¶ 1.27.

22 Non-Participating Class Members will not receive any Individual Class Payments. The
23 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
24 Amount for distribution to Participating Class Members on a pro rata basis. PAGA Penalties in
25 the amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
26 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
27 Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
28 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00 by the total
number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.



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Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement ¶ 1.23.

Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges. Settlement ¶ 8.6.

E. Apportionment of Settlement Shares

Each Settlement Share is intended, in part, to settle the Class Members' claims for Defendants' failure to pay overtime wages, failure to pay minimum wage, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, failure to furnish accurate wage statements, failure to timely pay wages upon termination of employment and waiting time penalties, and all claims for unfair competition. Except as set forth in Section 6.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Settlement ¶ 6.2.

F. The Releases

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties

1 from any and all claims, transactions, or occurrences he has or may have against them at this time,
2 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged,
3 based on the facts contained, in the Operative Complaint (b) all PAGA claims that were, or
4 reasonably could have been, alleged based on facts contained in the Operative Complaint,
5 Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below; and (c)
6 and all claims known and unknown, without exception, except as may be prohibited by law.
7 ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce the
8 Settlement, or to any claims for vested benefits, unemployment benefits, disability benefits, social
9 security benefits, workers' compensation benefits that arose at any time, or based on occurrences
10 outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different
11 from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
12 nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding
13 such different or additional facts or Plaintiff's discovery of them. Plaintiff's Waiver of Rights
14 Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly
15 waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the
16 California Civil Code, which reads:

17 A general release does not extend to claims that the creditor or releasing party does not
18 know or suspect to exist in his or her favor at the time of executing the release, and that if
19 known by him or her would have materially affected his or her settlement with the debtor
20 or Released Party.

21 Settlement ¶ 6.1.1.

22 All Participating Class Members, on behalf of themselves and their respective former and
23 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
24 Released Parties from (i) all claims that were alleged, or reasonably could have been alleged,
25 based on the Class Period facts stated in the Operative Complaint and ascertained in the course
26 of the Action including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204,
27 510, 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197,
28 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198) failure to
authorize and permit rest periods (Lab. Code §§ 226.7 and 1198) failure to indemnify for work
expenses (Lab. Code §§ 1198 and 2802) failure to furnish accurate wage statements (Cal. Labor
Code § 226) failure to timely pay wages upon termination of employment and waiting time



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1 penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. &
2 Prof. Code §§ 17200, et seq.). Settlement ¶ 6.2.

3 Except as set forth in Section 6.3 of the Settlement, Participating Class Members do not
4 release any other claims, including claims for vested benefits, wrongful termination, violation of
5 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
6 workers' compensation, or claims based on facts occurring outside the Class Period. Settlement
7 ¶ 6.2.

8 All Aggrieved Employees are deemed to release, on behalf of themselves and their
9 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
10 and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
11 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
12 Complaint and the PAGA Notice and ascertained in the course of the Action including but not
13 limited to claims for civil penalties for violations of Labor Code 201, 202, 203, 204, 226, 226.7,
14 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and applicable Wage Orders of the
15 Industrial Welfare Commission. Settlement ¶ 6.3.

16 **G. Notice and Claims Process and Procedures**

17 No later than three (3) business days after receipt of the Class Data, the Administrator
18 shall notify Class Counsel that the list has been received and state the number of Class Members,
19 PAGA Members, Class workweeks, and PAGA Pay Periods in the Class Data. Settlement ¶ 8.4.1.

20 Using best efforts to perform as soon as possible, and in no event later than 14 days after
21 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
22 Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish
23 translation, substantially in the form attached to the Settlement as Exhibit A. The first page of the
24 Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment
25 and/or Individual PAGA Payment payable to the Class Member, and the number of workweeks
26 and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class
27 Notices, the Administrator shall update Class Member addresses using the National Change of
28 Address database. Settlement ¶ 8.4.2.

No later than 3 business days after the Administrator's receipt of any Class Notice returned
by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
forwarding address provided by the USPS. If the USPS does not provide a forwarding address,



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1 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice
2 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
3 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
4 Notice to the most current address obtained. The Administrator has no obligation to make further
5 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
USPS a second time. Settlement ¶ 8.4.3.

6 The deadlines for Class Members' written objections, Challenges to Class Pay Periods
7 and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days
8 beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice
9 is re-mailed. The Administrator will inform the Class Member of the extended deadline with the
re-mailed Class Notice. Settlement ¶ 8.4.4.

10 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers
11 any persons who believe they should have been included in the Class Data and should have
12 received Class Notice, the Parties will expeditiously meet and confer in person or by telephone,
13 and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties
14 agree, such persons will be Class Members entitled to the same rights as other Class Members,
15 and the Administrator will send, via email or overnight delivery, a Class Notice requiring them
16 to exercise options under the Settlement not later than 14 days after receipt of Class Notice, or
the deadline dates in the Class Notice, which ever are later. Settlement ¶ 8.4.5.

17 **1. Class Member Disputes**

18 Each Class Member shall have 60 days after the Administrator mails the Class Notice
19 (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the
20 number of Class workweeks and PAGA Pay Periods (if any) allocated to the Class Member in
the Class Notice. The Class Member may challenge the allocation by communicating with the
21 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
22 Member to submit supporting documentation. In the absence of any contrary documentation, the
23 Administrator is entitled to presume that the Class workweeks and PAGA Pay Periods contained
in the Class Notice are correct so long as they are consistent with the Class Data. The
24 Administrator's determination of each Class Member's allocation of Class workweeks and/or
25 PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The
26 Administrator shall promptly provide copies of all challenges to calculation of Class workweeks
27
28



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1 and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's
2 determination the challenges. Settlement ¶ 8.6.

3 **2. Opting Out**

4 Class Members may submit requests to be excluded from the Settlement, or objections to
5 the Settlement, pursuant to the following procedures:

6 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
7 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
8 than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
9 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
10 Member or his/her representative that reasonably communicates the Class Member's election to
11 be excluded from the Settlement and includes the Class Member's name, address and email
12 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
13 or postmarked by the Response Deadline. Settlement ¶ 8.5.1.

14 The Administrator may not reject a Request for Exclusion as invalid because it fails to
15 contain all the information specified in the Class Notice. The Administrator shall accept any
16 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
17 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
18 determination shall be final and not appealable or otherwise susceptible to challenge. If the
19 Administrator has reason to question the authenticity of a Request for Exclusion, the
20 Administrator may demand additional proof of the Class Member's identity. The Administrator's
21 determination of authenticity shall be final and not appealable or otherwise susceptible to
22 challenge. Settlement ¶ 8.5.2.

23 Every Class Member who does not submit a timely and valid Request for Exclusion is
24 deemed to be a Participating Class Member under the Settlement, entitled to all benefits and
25 bound by all terms and conditions of the Settlement, including the Participating Class Members'
26 Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the Participating
27 Class Member actually receives the Class Notice or objects to the Settlement. Settlement ¶ 8.5.3.

28 Every Class Member who submits a valid and timely Request for Exclusion is a Non-
Participating Class Member and shall not receive an Individual Class Payment or have the right
to object to the class action components of the Settlement. Because future PAGA claims are
subject to claim preclusion upon entry of the Judgment, all Aggrieved Employees are bound to



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the PAGA Settlement regardless of whether or not they submit a valid and timely Request for Exclusion, and are deemed to release the claims identified in Paragraph 6.3 of the Settlement and are eligible for an Individual PAGA Payment. Challenges to Calculation of Workweeks and/or Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class workweeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges. Settlement ¶ 8.5.4.

The Settlement contemplates Defendants' right to withdraw from the Settlement per the "blow up" provision. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than 7 days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

3. Objecting

Only Participating Class Members may object to the class action components of the Settlement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

1 Participating Class Members may send written objections to the Administrator, by fax,
2 email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an
3 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
4 Participating Class Member who elects to send a written objection to the Administrator must do
5 so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional
6 14 days for Class Members whose Class Notice was re-mailed).

7 Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement. Settlement ¶ 8.7.3.

9 **H. Uncashed Checks**

10 For any Class Member whose Individual Class Payment check or Individual PAGA
11 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
12 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
13 name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of
14 California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.4.

15 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

16 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
17 and its members are too numerous for joinder to be practical; (2) the representative and absent
18 class members share a community of interest and questions of law and fact common to the class
19 predominate over questions unique to individual class members; (3) the representative's claims
20 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
21 class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
22 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
23 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
24 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

25 **A. The Settlement Class Is Objectively Ascertainable**

26 A class is ascertainable when it may be readily identified without unreasonable expense
27 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
28 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
defined Class is ascertainable because its members may be identified by reference to Defendants'
records and Defendants have agreed to share the relevant information from their records to



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1 facilitate the settlement process. DS, ¶ 10; Settlement, ¶ 2.4. Therefore, the Settlement Class is
2 ascertainable.

3 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

4 The Settlement Class has sufficiently numerous members to render joinder impractical.
5 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
6 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 111 Class
7 Members. DS, ¶ 11. Plaintiff maintains that it would be impractical and economically inefficient
8 to require each Class Member to separately maintain an individual action or be joined as a named
9 plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
the Settlement Class' membership is sufficiently numerous. DS, ¶ 11. *See Daar v. Yellow Cab*
11 *Co.* (1967) 67 Cal.2d 695.

12 **C. Class Members Share a Well-Defined Community of Interest**

13 The community of interest requirement “embodies three factors: (1) predominant common
14 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
15 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
16 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have uniform
17 or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App.
18 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice .
19 . . in order to assess whether that common behavior toward similarly situated plaintiffs renders
20 class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

21 To justify certification, the class proponent ““must show ... that questions of law or fact
22 common to the class predominate over the questions affecting the individual members”” *See,*
23 *Arenas v. El Torito Rests., Inc.*, 183 Cal. App 4th 723, 732 (2010) (citing *Washington Mut. Bank,*
24 *FA v. Superior Court*, 248 Cal 4th 906, 913 (2001)). In light of the more lenient standard for
25 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
26 the claims of the Class Members all stem from the same sources. DS, ¶ 15.

27 In this case, Plaintiff asserts all class members were subject to the same or similar
28 operations and employment policies, practices, and procedures. The claims arise from
Defendants’ alleged policy-driven failure to pay wages, unauthorized and unlawful wage
deductions, failure to indemnify for work expenses, failure to provide meal periods, failure to
authorize and permit rest periods, and related labor law violations, all of which Plaintiff claims



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1 constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
2 questions include, but are not limited to: (1) Whether Defendants failed to pay all wages earned
3 to class members for all hours worked at the correct rates of pay; (2) Whether Defendants failed
4 to provide the class with all meal and rest periods in compliance with California law; (3) Whether
5 Defendants failed to pay the class one additional hour of pay on workdays they failed to provide
6 the class with one or more meal or rest periods in compliance with California law; (4) Whether
7 Defendants failed to indemnify the class for all necessary business expenditures incurred during
8 the discharge of their duties; (5) Whether Defendants knowingly and intentionally failed to
9 provide the class with accurate wage statements; (6) Whether Defendants willfully failed to
10 provide the class with timely final wages; and (7) Whether Defendants engaged in unfair
11 competition within the meaning of Business and Professions Code section 17200, *et seq.*, with
12 respect to the class. DS, ¶ 12. Therefore, common questions predominate.

13 **D. Plaintiff Is Typical of the Settlement Class**

14 The class representative must be similarly situated to the rest of the purported class. *See*
15 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
16 that the class representative must have identical interests with the class members. The only
17 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
18 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
19 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that his claims
20 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that he, like absent
21 Class Members was subject to the same relevant policies and procedures governing his
22 compensation, hours of work, and meal and rest periods. Because Plaintiff contends that he was
23 subject to the same general course of conduct as absent Class Members, resolving the common
24 questions as they apply to Plaintiff will determine Defendants’ *prima facie* liability to all Class
25 Members. Moreover, Plaintiff’s claims could potentially be subject to the same primary
26 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff’s claims are typical
27 of the Class. DS, ¶ 13.

28 **E. Plaintiff Will Adequately Represent the Settlement 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 the class’
interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the



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1 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
2 conflicts of interest that might hinder the plaintiff's ability to represent the class. DS, ¶¶ 14-15.

3 First, Class Counsel have supplied the Court with declarations to show that they are
4 adequate to represent the Settlement Class and that they have significant experience in
5 employment litigation generally, and wage and hour and employment-related class action
6 litigation specifically. See DS, ¶¶ 16-23; Declaration of Walter L. Haines ("Haines Decl.") ¶ 3.
7 Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

8 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
9 Class Members have strong and co-extensive interests in this litigation because they all worked
10 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
11 the same alleged course of conduct, and there is no evidence of any conflict of interest between
12 Plaintiff and the Class Members. DS, ¶ 15. Moreover, Plaintiff has demonstrated his commitment
13 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
14 with documents and extensively speaking with them to assist in identifying the claims asserted in
15 this case, assisting them in identifying witnesses, as well as exposing himself to the risk of
16 attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 15. Thus,
17 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
18 find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under
19 Code of Civil Procedure § 382.

20 **F. Class Action Treatment Is the Superior Means For Resolving The Claims Of**
21 **The Class Members**

22 Plaintiff further contends that a class action is also superior to other means adjudicating
23 the issues in this action. The predominance of common legal and factual questions shows that this
24 Court could fairly adjudicate the claims of Class Members through a single class action. In view
25 of the *theoretical* alternatives that proposed class members could potentially utilize—
26 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
27 claims through the Division of Labor Standards Enforcement (where there would be relatively
28 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
superior to all of them. Thus, this consideration supports conditional class action treatment for
purposes of this Settlement only. DS, ¶ 24.



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1 **V. INTRODUCTION THE COURT SHOULD GRANT PRELIMINARY**
2 **APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND**
3 **REASONABLE**

4 **A. Legal Standard**

5 A class action settlement requires court approval. California Rules of Court (“CRC”),
6 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
7 written motion for preliminary approval, the proposed class settlement, and the proposed class
8 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
9 hearing where class members may be heard regarding the settlement, and at which evidence and
10 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
11 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
12 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
13 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

14 **B. The Settlement Is Presumptively Fair**

15 In assessing preliminary approval, a court evaluates if the settlement process has certain
16 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
17 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
18 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
19 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
20 48 Cal.App.4th at 1794.

21 The class settlement here satisfies all of these factors. DS, ¶ 26. The Settlement resulted
22 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
23 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
24 weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

25 **1.** At issue in this class and Private Attorneys General Act ("PAGA") action is a
26 concrete pumper’s liability to its approximately 111 hourly employees, including heavy
27 equipment operators, operators, field workers, and comparable employees (hereafter the
28 “Putative Class Members”) for its failure to pay all wages owed, provide rest and meal periods,
and reimburse for business expenses, and related violations of the Labor Code and applicable
Wage Order. DS, ¶ 27. Plaintiff prepared “damages” estimates in advance of the mediation. *Id.*,
Ex. 9. After mediation and during settlement discussions, Plaintiff also prepared their most recent
damages analysis. *Id.*, Ex. 10. In advance of the mediation, Plaintiff determined Defendants’
maximum exposure for restitution and penalties to be approximately \$2,724,715.69 (consisting



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1 of \$1,482,389.14 in unpaid wages, \$6,684.15 for unreimbursed expenses; \$611,602.26 in missed
2 meal period premium wages, \$624,040.13 in missed rest break premium wages, \$388,700.00 for
3 wage statement penalties, \$329,229.58 for waiting time penalties and \$8,375,770.58 for civil
4 penalties). Plaintiff calculated the damages based on the number of workweeks and pay periods
5 provided by Defendants, Plaintiff's reports, and the sample data. *Id.* Plaintiff also considered the
6 possibility that Defendants could launch a *Pick Up Stix* campaign and pursue individual release
7 agreements from the Class Members. Plaintiff's Counsel applied discounts to the maximum
8 exposure to account for all other risks discussed below. While it is difficult to assign anything
9 but crudely-determined percentages of risk to any of the claims, it is safe to say that the risk that
10 a *Pick Up Stix* campaign would preclude recovery for such employees is substantial and alone
11 justifies a significant discount because Defendants would likely by trial have gathered releases
12 from the majority of the Class Members. A settlement for approximately 8.30% of the potential
13 recovery is a proportion substantially in excess of recovery proportions sanctioned by existing
14 case law.⁴ *Id.*

15 Plaintiff is aware of only two significant awards under the PAGA in a contested
16 proceeding, both issued by federal district courts.⁵ DS, ¶ 39. PAGA penalty awards are often

17 ⁴ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
18 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
19 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
20 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
21 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
22 2017 WL708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
23 of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
24 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
25 potential recovery asserted by either party.”).

26 ⁵ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
27 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
28 plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
suffered a particularly sizeable injury – the court found that the defendant's policies caused
damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
Bernstein, who the court noted had received “millions of dollars from the state of California” to
train their flight attendants, engaged in glaring violations of the labor code, such as failing to
compensate its flight attendants for work performed outside of “block time” (time during which
the aircraft is moving), including time spent participating in pre-flight briefings, boarding
passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved



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1 small even for egregious, intentional violations of the Labor Code.⁶ *Id.* For instance, on October
2 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
3 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
4 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
5 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
6 PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar
result could occur here. *Id.*

7 Plaintiff's initial estimates do not realistically account for the risks outlined below or the
8 risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for
9 \$1,000,000.00 is fair and reasonable. *Id.*

10 **C. The Settlement Satisfies the Kullar Factors for Approval**

The *Kullar* case sets forth several factors a court should consider in determining whether
11 to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the
12 risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class
13 action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
14 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
15 of a governmental participant; and (8) the reaction of the class members to the proposed
16 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
factors.

17 **1. Evaluation of Plaintiff's Case**

18 **a. Risks Associated with Defendant Concrete Placement, Inc.'s**
19 **Financial Condition**

20 Defendant Concrete Placement, Inc.'s financial condition was the key factor in reaching
21 this Settlement. DS, ¶ 29. Due to Defendant Concrete Placement, Inc.'s financial condition, even
if Plaintiff prevailed on all claims at trial, he may never recover the damages due to the risk of

22 on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2019)
23 U.S. Dist. LEXIS 13253.

24 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the defendants' failures to
comply with the requirements of California Labor Code section 226.

25 ⁶ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
26 case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
27 plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
28 Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA.



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1 insolvency. A very large class action judgment would almost certainly put the company out of
2 business and/or would interfere with the Defendant Concrete Placement, Inc.’s ability to carry
3 out their contractual obligations. *Id.* In short, the “poor financial health of [the defendant will]
4 seriously increase [] the chance that Plaintiffs would be left with nothing if they continued to
5 litigate their claims.” *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the
6 financial condition of defendant predominated in assessing the reasonableness of settlement);
7 *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning
8 defendant’s financial stability “strongly supports the reasonableness of the settlement”); *Laguna*
9 *v. Coverall N. Am., Inc.* (9th Cir. 2014) 2014 U.S. App. LEXIS 10259 at *11 (finding potential
10 insolvency to be additional risk that favors approval of a class action settlement). Accordingly,
11 Defendant’s financial distress supports this settlement. *Id.*

12 **b. Risks Associated with Holding Defendant Collin Fleming**
13 **Liable**

14 Plaintiff’s counsel concluded that establishing that Defendant Fleming was an employer
15 of the Class Members would be difficult to establish because he was not an officer of Defendant
16 Concrete Placement, Inc. Additionally, the proof that he was responsible for the Labor Code
17 violations, many of which he was not physically present to observe, is inconclusive for personal
18 liability under Labor Code § 558.1. DS, ¶ 27.

19 **c. Risks Associated with the Unpaid Wages Claim**

20 There is a risk that Plaintiff’s recovery for unpaid wages would be extremely limited at
21 best, largely because Defendants’ policies during the relevant time period prohibited off-the-clock
22 work. DS, ¶ 29. Plaintiff’s claim that Defendants disallowed Class Members from recording
23 overtime hours worked on their handwritten time sheets was hotly disputed. Off-the-clock claims
24 are difficult where a defendant requires in its written policies that all work must take place while
25 clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must
26 have notice of off-the-clock work for it to be compensable). *Id.* In their written employment
27 policies, Defendants mandate that employees must record all time worked accurately on their time
28 records and strictly prohibit employees from performing any work off-the-clock. DS, ¶ 29.
Moreover, while Defendants dispute that off-the-clock work occurred, they contend that any time
spent off the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.*
(2018) 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject



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1 to a *de minimis* defense even if compensable. (Stating that “We do not decide whether there are
2 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
3 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
4 may apply here because the time spent off the clock were minute and insignificant. Plaintiff’s
5 contention that Defendants underpaid recorded overtime hours by miscalculating the weighted
6 average of various pay rates was also disputed and at best support for only a few unpaid cents on
7 the overtime hours worked. This claim could also be susceptible to a *de minimis* defense.
Accordingly, a large award of penalties seems unlikely with respect to this claim. *Id.*

8 The difficulty inherent in proving that off-the-clock work occurred poses a significant
9 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
10 Generally, a court will not certify a class unless it can determine an appropriate classwide
11 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff
12 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
13 the lack of records indicating when such off-the-clock work may have taken place. Individualized
14 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
15 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
16 risk that the Court would consider this evidentiary showing insufficient as a classwide
methodology. DS, ¶ 30.

17 **d. Risks Associated with the Meal Period Claims**

18 There are risks to Plaintiff’s meal period claim. DS, ¶ 31. Defendants contend that, to
19 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
20 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
21 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
22 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
23 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
24 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
to the meal break claim is the reason that a particular employee may have failed to take a meal
break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

25 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
26 from taking their meal or rest periods. DS, ¶ 32. Defendants contend that their meal and rest
27 period policies and practices are and always have been lawful in that non-exempt employees have
28



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1 been provided meal and rest periods as required, and their policies and practices comply with the
2 Labor Code, the Wage Orders, and all applicable California laws. Defendants' policies mandate
3 that employees take at least a 30-minute, uninterrupted meal periods and record the beginning
4 and ending time of their meal breaks each day on their time records. *Id.* The time records that
5 comprise the random sample Defendants produced to Plaintiff for purposes of mediation show
6 that meal periods were taken the vast majority of the time. *Id.* Of the time records that show a
7 late, short or no lunch, individualized evidence may be necessary to determine whether they
8 occurred due to conduct of the Defendants or each of the employees concerned. Accordingly,
9 there is a significant risk that the value of Plaintiff's meal period claim would be substantially
reduced at trial. *Id.*

10 **e. Risks Associated with the Rest Break Claims**

11 There are risks to Plaintiff's rest period claim. DS, ¶ 33. Employers are not required to
12 record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
13 employees the opportunity to take rest periods in accordance with California law. Further,
14 Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.*
15 Thus, unlike meal periods, where there are often records showing whether an employee clocked
16 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
17 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
18 Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
19 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
20 a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*,
21 (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class
certification, it may be possible to manage individual issues through the use of surveys and
22 statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast*
Corporation v. Behrend (2013) 133 S.Ct. 1426.

23 **f. Risks Associated with the Failure to Indemnify Claim**

24 There is a risk that the Court may consider Plaintiff's claims as to Defendants' alleged
25 failure to indemnify for business expenses to be individual in nature and thus decline to certify
26 the class. DS, ¶ 34. Plaintiff alleges that Defendants required Plaintiff and the Class Members to
27 use their personal items including cellular phones, computers and other electronic devices,
28 vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants
presented evidence that they have supplied their employees with tools, equipment, and other



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1 supplies and had an expense reimbursement policy. As such, there is a risk that the Court may
2 consider Plaintiff's claims to be individual in nature and unfit for class wide resolution. *Id.*

3 **g. Risks Associated with the Statutory "Wage Statement"**
4 **Penalty Claims**

5 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
6 PAGA penalties. Under Labor Code section 226, wage statements must include various
7 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
8 DS, ¶ 35.

9 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims,
10 as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply
11 with the requirements of Labor Code § 226.

12 **h. Risks Associated with The Waiting Time Penalties Claim**

13 Plaintiff's claim for untimely wages is predicated on Labor Code section 201 to 203. Like
14 the claim under Labor Code sec. 226, Plaintiff must establish that the late payments were willful.
15 The evidence of good faith Defendants put forth will defeat this claim. DS, ¶ 36.

16 **i. Risks Associated With the PAGA Claim**

17 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
18 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
19 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
20 valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the
21 PAGA claims likewise face significant uncertainty. DS, ¶ 37. There is a risk that the Court would
22 consider the maximum civil penalty available to be confiscatory. This is particularly the case
23 considering Defendants' financial condition. *Id.* Moreover, the current COVID-19 pandemic
24 could motivate the Court to further reduce the penalty award to avoid what it may consider a
25 confiscatory taking. *Id.*

26 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
27 significant discount for settlement purposes. DS, ¶ 38. For mediation purposes, Plaintiff's counsel
28 estimated a maximum exposure of approximately \$8,375,770.58 in civil penalties. This estimate
did not take into account any of the risks discussed above and assumed a violation for every single
pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay period for the
same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although
two federal district court decisions held that "stacking" PAGA penalties in this fashion may be



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appropriate to determine the amount in controversy for purposes of removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. *Id.*

j. Risks Associated With A Pick-Up Stix Campaign

An employer enjoys the right to settle a putative class member's disputed wage claims individually, without the consent or involvement of class counsel. DS, ¶ 41. (See *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendants may launch a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 69 members - until it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

While the evidence gathered through Plaintiff's discovery supports the merits of the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation presents significant risks that support a downward departure from Defendants' estimated liability exposure. DS, ¶ 42. In view of the risks, the Settlement reflects Plaintiff's estimate of the total amount of damages, monetary penalties or other relief that the Class could reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.* It also represents a fair, adequate, and reasonable compromise amount for these claims and warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial condition of defendant predominated in assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

2. Allocation of the PAGA Payment

The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is reasonable and appropriate under the circumstances. DS, ¶ 43. The Parties negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA



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was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements “negotiate [] a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500.00 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

3. Presence of Governmental Participant

As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this settlement to the LWDA. DS, ¶ 52, Ex. 11.

4. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Notice Packet (attached as Exhibit A to the Settlement) and an opportunity to object. DS, ¶ 53. The parties’ proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

1 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
2 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
3 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
4 **COMPARED TO OTHER CLASS MEMBERS**

5 The Individual Settlement Payments will be paid to each Class Member based on his or
6 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 48, Settlement ¶ 3.2.4.
7 Because this method compensates Class Members based on the extent of their potential injuries,
8 in that Class Members who worked for Defendants longer would have been subject to more
9 alleged violations, it is fair, adequate, and reasonable. *Id.*

10 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
11 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS**
12 **APPROPRIATE**

13 The Settlement states Class Counsel may seek attorneys' fees of \$333,333.00 (one-third
14 of the GSA) and up to \$12,500.00 for actual reasonable litigation costs and expenses incurred in
15 prosecuting the Action. Settlement ¶ 3.2.2. These amounts are reasonable, given the facts and
16 circumstances of the case. DS, ¶¶ 44-46.

17 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
18 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
19 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced
20 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
21 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
22 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
23 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
24 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
25 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
26 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
27 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
28 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
Litig. (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

29 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
30 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
31 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
32 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned



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1 down to devote time to this matter. DS, ¶ 45. Class Counsel interviewed and obtained information
2 from putative class members, met and conferred with Defendants' counsel on numerous
3 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
4 Defendants and obtained through other sources, researched applicable law, and provided
estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

5 Class Counsel have borne all the risks and costs of litigation and will receive no
6 compensation until recovery is obtained. DS, ¶ 46. Class Counsel are well-experienced in wage-
7 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
8 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
9 the requested fees and costs are reasonable and should be awarded. *Id.*

10 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
11 **SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS FAIR,**
ADEQUATE, AND REASONABLE

12 Courts routinely approve incentive awards to compensate named plaintiffs for the services
13 they provide and the risks they incur during class action litigation, often in much higher amounts
14 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
15 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
Vranken v. Atlantic Richfield Co. (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
16 enhancement award). The Settlement provides that Plaintiff may seek an Class Representative
17 Service Payment of \$20,000.00. This amount is entirely reasonable given Plaintiff's efforts in this
18 action and the risks he undertook on behalf of Class Members. DS, ¶ 48. Plaintiff has devoted
19 many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among
20 other things, retaining experienced counsel, providing them with information about his work
21 history with Defendants and Defendants' policies and practices with respect to the wage and hour
22 claims at issue, participating in mediation, and being actively involved in the settlement process
23 to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed
24 to significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if
25 this action had been unsuccessful (*See Labor Code §§ 218.5-218.6*). The efforts and risks that
26 Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
27 Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary
28 approval. DS, ¶ 48.



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1 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
2 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
3 **AND REASONABLE**

4 With regard to the settlement administration costs provision, it is reasonable. Before
5 agreeing to ILYM Group, Inc. and its bid of \$5,000.00, the Parties sought and reviewed bids from
6 other reputable third-party administrators which provided higher bids. DS, ¶ 51-52, Exs. 12, 13,
7 and 14. The Parties selected ILYM Group, Inc. as the administrator because its bid was lower
8 than those of other competing administrators, whom the Parties did not select. Thus, the
9 settlement administration costs provision should be given preliminary approval.

10 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
11 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
12 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
13 **EXERCISE THEIR RIGHTS**

14 This Court should approve the proposed plans for giving notice to the Settlement Class
15 and administering the Settlement. The standard for determining the adequacy of notice is whether
16 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
17 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
18 measures to ensure that as many Class Members as practicable receive actual notice of the
19 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
20 the Notice by First Class U.S. mail only. Settlement, ¶ 4.4.2. Although there are current employee
21 Class Members, it is uncertain whether Defendants’ records of their contact information include
22 email addresses and Class Members, who perform all of their work away from a desk, are not in
23 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
24 DS, ¶ 49.

25 With respect to its content, “[The] notice given to the class must fairly apprise the class
26 members of the terms of the proposed compromise and of the options open to dissenting class
27 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
28 The purpose of the notice in class settlement context is to give class members sufficient
information to decide whether they should accept the benefits offered, opt out and pursue their
own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
Class Members with all pertinent information that they need to fully evaluate their options and
exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how



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1 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
2 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
3 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
4 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will be
5 in English and Spanish and will include the number of Work Weeks a Class Member had during
6 the Class Period. The reason the Class Notice will also include Spanish translation is because
7 Defendants employ class members for whom English is a second language. Accordingly, the
8 Notice should be approved because it describes the Settlement with sufficient clarity and
9 specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 50.

10 **XI. CONCLUSION**

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and
11 adopt the proposed order submitted concurrently herewith.

12 Respectfully submitted,

13 THE SPIVAK LAW FIRM

14
15 Dated: January 6, 2023

By: 

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CANTRELL, and all others similarly
situated



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