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9

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

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

16 *Plaintiff(s),*

17 vs.
18

19 WESTCO EQUITIES, INC. DBA WESTCO
PROPERTY MANAGEMENT, a California
20 corporation; and DOES 1–50, inclusive,

21 *Defendant(s).*
22

Case No. 21CECG02993

**PLAINTIFF DEAN CRUMPLER’S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**



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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 Dean Crumpler ("Plaintiff") submits this memorandum of points and authorities
5 in support of his unopposed motion for preliminary approval of the Class Action and PAGA
6 Settlement Agreement (the "Settlement")¹, which provides for a Gross Settlement Amount
7 ("GSA") of \$250,000.00 in compromise of all disputed claims on behalf of all persons hourly,
8 non-exempt in California of Defendant Westco Equities, Inc. dba Westco Property Management
9 ("Defendant") in California at any time between October 7, 2017 through September 17, 2022.
10 Through this Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the
11 below-defined Class for settlement purposes only under Code of Civil Procedure § 382; (2)
12 preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class Representative;
13 (4) appoint David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees
14 Law Group as Class Counsel; (5) approve the proposed notice procedures and related forms; and
15 (6) schedule a final approval hearing.

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

26 **II. BACKGROUND AND PROCEDURAL HISTORY**

27 Defendant is a residential property manager. Defendant employed Plaintiff as a
28 maintenance worker from about April 2, 2018 until March 21, 2021. DS, ¶ 4.

///

///

¹ The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"),
which is submitted herewith under a separate cover.



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

2 On August 17, 2021, Plaintiff notified Defendant and the California Labor and Workforce
3 Development Agency (“LWDA”), pursuant to the California Private Attorneys General Act of
4 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor Code violations
5 committed by Defendant. DS, ¶ 5, Ex. 2.

6 On October 07, 2021, Plaintiff filed a Class Action Complaint in the Fresno County
7 Superior Court, Case No. 21CECG02993, against Defendant on behalf of himself and others
8 similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All Wages
9 Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide
10 Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code
11 §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage
12 Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§
13 201-203); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 6, Ex. 3. On
14 October 21, 2021, Plaintiff filed his First Amended Complaint adding a claim under PAGA. DS,
15 ¶ 6, Ex. 4. On December 29, 2021, Defendant filed an answer to Plaintiff’s First Amended
16 Complaint. DS, ¶ 6, Ex. 5. Defendant denies all of Plaintiff’s allegations and strongly contends
17 that its wage and hour policies, practices and procedures are fully compliant with all applicable
18 laws. DS, ¶ 6.

19 **B. Mediation**

20 The Parties thereafter engaged in an informal, voluntary exchange of information in the
21 context of privileged settlement discussions to facilitate an early mediation. Defendant produced
22 Plaintiff’s personnel file (including policies and agreements he signed and acknowledged), copies
23 of its relevant company written policies, and time and payroll data for a random sample of putative
24 class members s selected by Defendant’s counsel. DS, ¶ 7.

25 On July 19, 2022, following much of the foregoing informal discovery and exchange of
26 information, the Parties participated in a mediation session presided over by Mediator Scott
27 Radovich, an experienced class action mediator. During the mediation, the Parties had a full day
28 of productive negotiations and reached agreement on a class-wide settlement during the second
29 mediation session. During the mediation sessions, each side, represented by his/its respective
30 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and
31 all other matters covered by this Agreement pursuant to the terms and conditions of this
32 Agreement. DS, ¶ 8.



1 **III. OVERVIEW OF THE SETTLEMENT**

2 **A. Settlement Class Definition**

3 The Settlement defines the Class as all persons employed by Defendant in California and
4 classified as hourly, non-exempt who worked for Defendant during the period between October
7, 2017 through September 17, 2022.

5 **B. Monetary Terms**

6 "Gross Settlement Amount" means \$250,000.00 which is the total amount Defendant
7 agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual
8 Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees,
9 Class Counsel Expenses, Class Representative Service Payment, the Administrator's Expenses.
10 Defendant promises to pay \$250,000.00 and no more as the Gross Settlement Amount and to
11 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
12 Class Payments. Net Settlement Amount" means the Gross Settlement Amount, less the following
13 payments in the amounts approved by the Court: PAGA Penalties in the amount of \$4,000.00
14 (with 75% (\$3,000.00) allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated
15 to the Individual PAGA Payments), Class Representative Service Payment to the Class
16 Representative of not more than \$15,000.00, Class Counsel Fees Payment of not more than
17 33.33% or \$83,333.00, Class Counsel Litigation Expenses Payment of not more than \$15,000.00,
18 and the Administration Expenses Payment not to exceed \$10,000.00 except for a showing of good
19 cause and as approved by the Court. The remainder is to be paid to Participating Class Members
20 as Individual Class Payments. Settlement ¶ 1 and ¶ 3.

21 **1. Escalator Provision**

22 Based on its records, Defendant estimates that, as of the date of this Settlement
23 Agreement, (1) there are 158 Class Members and 17,545 Total Work Weeks during the Class
24 period and (2) there were 96 Aggrieved Employees who worked 3,474 Pay Periods during the
25 PAGA Period. If the Work Weeks and/or Class Members as of the date the Court approves the
26 settlement exceeds the referenced 17,545 Work Weeks and/or 158 Class Members by more than
27 10.00%, Defendant will have the option to either increase proportionally Gross Settlement
28 Amount, including the Class Counsel Fees Payment, the Class Representative Service Payment,
and the LWDA PAGA Payment, according to the number of additional Work Weeks or Class
Members, whichever results in a higher increase in the Gross Settlement Amount, or to limit the



1 Class Period end date to one on which the number of Class Members does not exceed 174 and
2 work weeks does not exceed 19,300, respectively. Settlement ¶ 9.

3 **C. Timing of Payments**

4 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
5 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
6 Administrator no later than 21 days after the Effective Date. Within 14 days after Defendant
7 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class
8 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
9 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
10 Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
11 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative
12 Service Payment shall not precede disbursement of Individual Class Payments and Individual
13 PAGA Payments. The Administrator will issue checks for the Individual Class Payments and/or
14 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
15 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
16 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
17 not cashed by the void date. The Administrator will send checks for Individual Settlement
18 Payments to all Participating Class Members (including those for whom Class Notice was
19 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
20 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
21 Employees (including those for whom Class Notice was returned undelivered). The
22 Administrator may send Participating Class Members a single check combining the Individual
23 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
24 must update the recipients' mailing addresses using the National Change of Address Database.
25 Settlement ¶ 4.

26 **D. Calculation of Settlement Shares**

27 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by
28 the total number of Work Weeks worked by all Participating Class Members during the Class
Period and (b) multiplying the result by each Participating Class Member's Work Weeks.
Settlement ¶ 3.2.4. 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. Settlement ¶ 3.2.5.1.

E. Apportionment of Settlement Shares

20.00% 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 80.00% of each Participating Class Member's Individual Class Payment 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. Settlement ¶ 3.2.4.1. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Settlement ¶ 3.2.5.2.

F. The Releases

"Released Parties" means Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns subsidiaries, and affiliates. Released Parties as referenced herein and as released in this Settlement are Defendant and any of its present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims, and Defendant's counsel of record in the Action. Settlement ¶ 1.41.

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds 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's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative



1 Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released. ("Plaintiff's
2 Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement,
3 or to any claims for vested benefits, unemployment benefits, disability benefits, social security
4 benefits, workers' compensation benefits that arose at any time, or based on occurrences outside
5 the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from,
6 or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
7 nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding
8 such different or additional facts or Plaintiff's discovery of them For purposes of Plaintiff's
9 Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of
10 section 1542 of the California Civil Code, which reads:

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

15 Settlement ¶ 6.

16 Release by Participating Class Members Who Are Not Aggrieved Employees: All
17 Participating Class Members, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
19 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the
20 Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
21 including, failure to pay wages, failure to pay overtime wages, failure to provide meal periods,
22 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to
23 issue proper wage statements, failure to timely pay wages, failure to maintain required payroll
24 records, and related allegations. Except as set forth in Section 6.3 of this Agreement, Participating
25 Class Members do not release any other claims, including claims for vested benefits, wrongful
26 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
27 disability, social security, workers' compensation, or claims based on facts occurring outside the
28 Class Period. Settlement ¶ 6.2.

29 Release by Non-Participating Class Members Who Are Aggrieved Employees: All
30 Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf
31 of themselves and their respective former and present representatives, agents, attorneys, heirs,



1 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties
2 that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated
3 in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action
4 including, failure to pay wages, failure to pay overtime wages, failure to provide meal periods,
5 failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to
6 issue proper wage statements, failure to timely pay wages, failure to maintain required payroll
records, and related claims. Settlement ¶ 6.3.

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

8 Using best efforts to perform as soon as possible, and in no event later than 14 days after
9 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
10 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish
11 translation, if applicable substantially in the form attached to this Agreement as Exhibit A. The
12 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual
13 Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number
14 of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
15 mailing Class Notices, the Administrator shall update Class Member addresses using the National
16 Change of Address database. Not later than 3 business days after the Administrator’s receipt of
17 any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
18 Notice using any forwarding address provided by the USPS. If the USPS does not provide a
19 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
20 the Class Notice to the most current address obtained. The Administrator has no obligation to
21 make further attempts to locate or send Class Notice to Class Members whose Class Notice is
22 returned by the USPS a second time. The deadlines for Class Members’ written objections,
23 Challenges to Work Weeks and/or Pay Periods, and Requests for Exclusion will be extended an
additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class
Members whose notice is re-mailed. The Administrator will inform the Class Member of the
extended deadline with the re-mailed Class Notice. Settlement ¶ 8.4.

24 **1. Class Member Disputes**

25 Each Class Member shall have 60 days after the Administrator mails the Class Notice
26 (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the
27 number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in
28 the Class Notice. The Class Member may challenge the allocation by communicating with the



1 Administrator via fax, email or mail. The Administrator must encourage the challenging Class
2 Member to submit supporting documentation. In the absence of any contrary documentation, the
3 Administrator is entitled to presume that the Work Weeks contained in the Class Notice are
4 correct so long as they are consistent with the Class Data. The Administrator's determination of
5 each Class Member's allocation of Work Weeks and/or Pay Periods shall be final and not
6 appealable or otherwise susceptible to challenge. The Administrator shall promptly provide
7 copies of all challenges to calculation of Work Weeks and/or Pay Periods to Defense Counsel and
8 Class Counsel and the Administrator's determination the challenges. Settlement ¶ 8.6.

2. Opting Out

9 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
10 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
11 than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
12 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
13 Member or his/her representative that reasonably communicates the Class Member's election to
14 be excluded from the Settlement and includes the Class Member's name, address and email
15 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
16 or postmarked by the Response Deadline. Settlement ¶ 8.5.

3. Objecting

16 Only Participating Class Members may object to the class action components of the
17 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
18 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment and/or Class Representative Service Payment. Participating Class Members may send
20 written objections to the Administrator, by fax, email, or mail. In the alternative, Participating
21 Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal
22 objections at the Final Approval Hearing. A Participating Class Member who elects to send a
23 written objection to the Administrator must do so not later than 60 days after the Administrator's
24 mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice
25 was re-mailed). Settlement ¶ 8.7.

H. Uncashed Checks

25 For any Class Member whose Individual Class Payment check or Individual PAGA
26 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
27 funds represented by such checks to the California Controller's Unclaimed Property Fund in the



1 name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of
2 California Code of Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

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

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

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

12 A class is ascertainable when it may be readily identified without unreasonable expense
13 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
14 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
15 defined Class is ascertainable because its members may be identified by reference to Defendant’s
16 records and Defendant has agreed to share the relevant information from its records to facilitate
the settlement process. DS, ¶ 9; Settlement, ¶ 4.2. Therefore, the Settlement Class is ascertainable.

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

18 The Settlement Class has sufficiently numerous members to render joinder impractical.
19 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
20 (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 158 Class
21 Members. DS, ¶ 10. Plaintiff maintains that it would be impractical and economically inefficient
22 to require each Class Member to separately maintain an individual action or be joined as a named
23 plaintiff in this action. The California Supreme Court has upheld a class of as few as 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, ¶ 10. *See Daar v. Yellow Cab*
24 *Co.* (1967) 67 Cal.2d 695.

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

26 The community of interest requirement “embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
28



(3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

To justify certification, the class proponent “‘must show .. that questions of law or fact common to the class predominate over the questions affecting the individual members ..’” *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank, FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient standard for certification of a settlement class, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources. DS, ¶ 11; Settlement, ¶ 13.1

In this case, Plaintiff asserts all class members were subject to the same or similar operations and employment policies, practices, and procedures. The claims arise from Defendant’s alleged policy-driven failure to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related labor law violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned to class members for all hours worked at the correct rates of pay; (2) Whether Defendant failed to provide the class with all meal and rest periods in compliance with California law; (3) Whether Defendant failed to pay the class one additional hour of pay on workdays it failed to provide the class with one or more meal or rest periods in compliance with California law; (4) Whether Defendant failed to indemnify the class for all necessary business expenditures incurred during the discharge of their duties; (5) Whether Defendant knowingly and intentionally failed to provide the class with accurate wage statements; (6) Whether Defendant willfully failed to provide the class with timely final wages; and (7) Whether Defendant engaged in unfair competition within the meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 12. Therefore, common questions predominate.

///



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

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

16 **E. Plaintiff Will Adequately Represent the Settlement Class**

17 The adequacy requirement is met where the plaintiff is represented by counsel qualified
18 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’
19 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
20 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
21 conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 14.

22 First, Class Counsel have supplied the Court with declarations to show that they are
23 adequate to represent the Settlement Class and that they have significant experience in
24 employment litigation generally, and wage and hour and employment-related class action
25 litigation specifically. *See* DS, ¶¶ 15-23; Declaration of Walter L. Haines (“Haines Decl.”) ¶ 2-3.
26 Thus, Plaintiff’s counsel are adequate to serve as Class Counsel.

27 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
28 Class Members have strong and co-extensive interests in this litigation because they all worked
29 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
30 the same alleged course of conduct, and there is no evidence of any conflict of interest between
31 Plaintiff and the Class Members. DS, ¶ 15. Moreover, Plaintiff has demonstrated his commitment
32 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel



1 with documents and extensively speaking with them to assist in identifying the claims asserted in
2 this case, assisting them in identifying witnesses, as well as exposing himself to the risk of
3 attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. DS, ¶ 15. Thus,
4 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
5 find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under
6 Code of Civil Procedure § 382.

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

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

18 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE**
19 **SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

20 **A. Legal Standard**

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

B. The Settlement Is Presumptively Fair

In assessing preliminary approval, a court evaluates if the settlement process has certain
indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the



1 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
2 of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
3 48 Cal.App.4th at 1794.

4 The class settlement here satisfies all of these factors. DS, ¶ 25. The Settlement resulted
5 from thorough, arms’ length, negotiations between experienced counsel with the assistance of a
6 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
7 weaknesses of their respective cases and Defendant’s estimated exposure. *Id.*

8 At issue in this class and Private Attorneys General Act (“PAGA”) action is Defendant’s
9 liability to its non-exempt, hourly employees for its meal and rest period violations, unpaid wages,
10 unreimbursed business expenses, and related violations of the Labor Code and applicable Wage
11 Order. DS, ¶ 26. Plaintiff prepared “damages” estimates in advance of the mediation. DS, ¶ 26,
12 Ex. 6. In advance of the mediation, Plaintiff determined Defendant’s maximum exposure for
13 restitution and penalties to be approximately \$8,368,287.00 (consisting of \$2,080,808.93 in
14 unpaid wages, \$1,314,100.20 in missed meal period premium wages, \$1,368,062.51 in missed
15 rest break premium wages, \$380,000.00 for wage statement penalties, \$163,062.58 for waiting
16 time penalties, and \$1,753,400.00 for civil penalties). Plaintiff calculated the damages based on
17 the number of workweeks and pay periods provided by Defendant, Plaintiff’s reports, and the
18 sample data. *Id.* Plaintiff also considered the possibility that Defendant could launch a *Pick Up*
19 *Stix* campaign and pursue individual release agreements from the Class Members. Defendant also
20 represented that it had interviewed all of Defendant’s current employees regarding Plaintiff’s
21 claims, all of whom would provide declarations, under penalty of perjury, that were favorable to
22 Defendant with respect to the relevant factual issues at issue in Plaintiff’s action. Plaintiff’s
23 Counsel applied discounts to the maximum exposure to account for all other risks discussed
24 below. While it is difficult to assign anything but crudely-determined percentages of risk to any
25 of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery
26 for such employees is substantial and alone justifies a significant discount because Defendant
27 would likely by trial have gathered releases from the majority of the Class Members.² *Id.*

25 ² See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
26 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
27 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
28 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,



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Plaintiff is aware of only two significant awards under the PAGA in a contested proceeding, both issued by federal district courts.³ DS, ¶¶ 38-39. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code.⁴ *Id.* For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar result could occur here. *Id.*

2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that "is just over 9% of the maximum potential recovery asserted by either party.").

³ In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil penalties under the PAGA of \$12,277,500.00 where total adjusted damages were \$18,695,692.58. In this regard, the district court stated,

The plain language of PAGA provides that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, *based on the facts and circumstances of the particular case*, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code s 2699(e)(2) (emphasis added). The relationship between the amount of total damages and the amount of maximum PAGA penalties is certainly a "circumstance" of the case under the term's ordinary meaning. The weight given to that circumstance is greater in this case because Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs' individual claims except for one. As a general matter, it would be excessively punitive for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed the damages caused by that injury or set of injuries.

Id., fnnt. 9. The district court further stated, "Virgin "has not presented any evidence that the full penalty would be excessive in relation to its ability to pay," the weight of this factor is lessened." *Id.*

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 Defendant's failures to comply with the requirements of California Labor Code section 226.

⁴ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under the PAGA.



Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. DS, ¶ 27. Therefore, Plaintiff believes a class settlement for \$250,000.00 is fair and reasonable. *Id.*

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

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

1. Evaluation of Plaintiff's Case

a. Risks Associated with the Unpaid Wages Claim

There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at best, largely because Defendant's written policies throughout the relevant time period prohibited off-the-clock work. DS, ¶ 28. Off-the-clock claims are difficult where a defendant requires in its written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be compensable). *Id.* In its written employment policies, Defendant mandates that employees must record all time worked accurately on their time records and strictly prohibit employees from performing any work off-the-clock. DS, ¶ 28. Moreover, while Defendant disputes that off-the-clock work occurred, it contends 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 to a *de minimis* defense even if compensable. (Stating that "We do not decide whether there are circumstances where compensable time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following *Troester*, Defendant contends that the *de minimis* doctrine may apply here because the time spent off the clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with respect to this claim. *Id.*

Defendant required its employees to sign their timesheets and acknowledge that they reported all their hours worked and meal and rest breaks truthfully and accurately. Further,



1 Defendant presented evidence that in its larger properties with similar staffing, employees rarely
2 report overtime wages. Defendant also presented evidence that on rare occasions when employees
3 report overtime hours on their timesheets, Defendant pays overtime wages. The difficulty
4 inherent in proving that off-the-clock work occurred poses a significant hurdle to Plaintiff.
5 Plaintiff will rely on declarations and witness statements to prove this claim. Generally, a court
6 will not certify a class unless it can determine an appropriate classwide methodology. *See, e.g.,*
7 *Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here, Plaintiff may rely heavily on
8 anecdotal evidence to prove the off-the-clock work claim, especially given the lack of records
9 indicating when such off-the-clock work may have taken place. Individualized inquiries would
10 need to be conducted person-by-person, day-by-day, to determine if an individual in fact worked
11 “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant risk that the Court
12 would consider this evidentiary showing insufficient as a classwide methodology. DS, ¶ 29.

13 **b. Risks Associated with the Meal Period Claims**

14 There are risks to Plaintiff’s meal period claim. DS, ¶ 30. Defendant contends that, to
15 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
16 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
17 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
18 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
19 show the employer impeded, discouraged, or prohibited the employee from taking a proper break,
20 or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard
21 to the meal break claim is the reason that a particular employee may have failed to take a meal
22 break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

23 Defendant contends it did not impede or discourage Plaintiff, or any other employees,
24 from taking their meal or rest periods. DS, ¶ 31. Defendant’s policies mandate that employees
25 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
26 of their meal breaks each day on their time records. *Id.* The time records that comprise the random
27 sample Defendant produced to Plaintiff for purposes of mediation show that meal periods were
28 taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch,
individualized evidence may be necessary to determine whether they occurred due to conduct of
the Defendant or each of the employees concerned. Accordingly, there is a significant risk that
the value of Plaintiff’s meal period claim would be substantially reduced at trial. *Id.*



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1 with the requirements of Labor Code § 226. DS, ¶ 34.

2 **f. Risks Associated with the Statutory “Waiting Time” Penalty**
3 **Claims.**

4 Without proof of willful behavior, Plaintiff will be unable to recover these penalties.
5 DS, ¶ 35.

6 **g. Risks Associated With the PAGA Claim**

7 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
8 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
9 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendant has posed valid
10 defenses to the Labor Code claims underlying Plaintiff’s PAGA allegations. Thus, the PAGA
11 claims likewise face significant uncertainty. DS, ¶ 36. There is a risk that the Court would
12 consider the maximum civil penalty available to be confiscatory. This is particularly the case
13 considering Defendant’s financial condition. *Id.* Moreover, the current COVID-19 pandemic
14 could motivate the Court to further reduce the penalty award to avoid what it may consider a
15 confiscatory taking. *Id.*

16 This uncertainty increases Plaintiff’s risk of pursuing the PAGA claims and required a
17 significant discount for settlement purposes. DS, ¶ 37. For mediation purposes, Plaintiff’s counsel
18 estimated a maximum exposure of approximately \$1,753,400.00 in civil penalties. This estimate
19 did not take into account any of the risks discussed above and assumed a violation for every single
20 pay period. *Id.* Plaintiff’s counsel also assessed multiple penalties for the same pay period for the
21 same alleged violations of different Labor Code provisions and derivative violations. *Id.* Although
22 two federal district court decisions held that “stacking” PAGA penalties in this fashion may be
23 appropriate to determine the amount in controversy for purposes of removal jurisdiction,
24 Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs multiple PAGA
25 penalties for the same violation for the same pay period under different Labor Code provisions.
26 *Id.* This may be because the PAGA does not provide for what many employers characterize as
27 claim splitting and not merely stacking. *Id.*

28 **h. 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, ¶ 40. *See Chindarah v.*
Pick Up Stix, Inc. (2009) 171 Cal. App. 4th 796. *Id.* As discussed above, Defendant may launch a
“pick off” settlement campaign to pursue individual release agreements from the Class Members,



1 thereby potentially narrowing the size of the Settlement Class – 69 members - until it is no longer
2 numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient number of
3 employees to represent. This led to a significant reduction of claim value in settlement
4 negotiations. *Id.*

5 While the evidence gathered through Plaintiff's discovery supports the merits of the
6 claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
7 presents significant risks that support a downward departure from Defendant's estimated liability
8 exposure. DS, ¶ 41. In view of the risks, the Settlement reflects Plaintiff's estimate of the total
9 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
10 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
11 It also represents a fair, adequate, and reasonable compromise amount for these claims and
12 warrants preliminary approval. *Id.*, *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
13 1376 (the financial condition of defendant predominated in assessing the reasonableness of
14 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
15 concerning defendant's financial stability "strongly supports the reasonableness of the
16 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
17 WL 2465049, * 3.

18 **2. Allocation of the PAGA Payment**

19 The settlement of PAGA penalties in the sum of \$4,000.00, of which 75% (\$3,000.00)
20 will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is reasonable and
21 appropriate under the circumstances. DS, ¶ 42. The Parties negotiated a good faith amount for
22 PAGA penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
23 was not the result of self-interest at the expense of other Class Members. *Id.* Where settlements
24 "negotiate[] a good faith amount" for PAGA penalties and "there is no indication that this amount
25 was the result of self-interest at the expense of other Class Members," such amounts are generally
26 considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844
27 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good
28 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



1 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
2 courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
3 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
4 *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
5 payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*
6 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
7 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
8 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
9 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D.
10 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
11 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
12 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.*

13 **3. Presence of Governmental Participant**

14 As required under Labor Code section 2699(l)(2), Plaintiffs will provide notice of this
15 settlement to the LWDA. DS, ¶ 51, Ex. 12.

16 **4. Reaction of Class Members to Proposed Settlement**

17 If the settlement is preliminarily approved, Class Members will be provided with the
18 Notice Packet (attached as Exhibits A, B, and C to the Settlement) and an opportunity to object.
19 DS, ¶ 48. 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
20 settlement. *Id.*

21 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**

22 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**

23 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**

24 **COMPARED TO OTHER CLASS MEMBERS**

25 The Individual Settlement Payments will be paid to each Class Member based on his or
26 her eligible Work Weeks compared to the total Work Weeks. DS, ¶ 47, Settlement ¶ 3. Because
27 this method compensates Class Members based on the extent of their potential injuries, in that
28 Class Members who worked for Defendant longer would have been subject to more alleged
violations, it is fair, adequate, and reasonable. *Id.*



1 **VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’**
2 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS**
3 **APPROPRIATE**

4 The Settlement states Class Counsel may seek attorneys’ fees of \$83,333.00 (one-third of
5 the GSA) and up to \$15,000.00 for actual reasonable litigation costs and expenses incurred in
6 prosecuting the Action. Settlement ¶ 3. These amounts are reasonable, given the facts and
7 circumstances of the case. DS, ¶¶ 43-45.

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

21 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
22 took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
23 skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
24 value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned
25 down to devote time to this matter. DS, ¶ 44. Class Counsel interviewed and obtained information
26 from putative class members, met and conferred with Defendant’s counsel on numerous
27 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
28 Defendant and obtained through other sources, researched applicable law, and provided
estimates of “damages” for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no
compensation until recovery is obtained. DS, ¶ 45. Class Counsel are well-experienced in wage-
and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*



1 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
2 the requested fees and costs are reasonable and should be awarded. *Id.*

3 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFF**
4 **SHOULD BE PRELIMINARILY APPROVED BECASUSE IT IS FAIR,**
5 **ADEQUATE, AND REASONABLE**

6 Courts routinely approve incentive awards to compensate named plaintiffs for the services
7 they provide and the risks they incur during class action litigation, often in much higher amounts
8 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
9 (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van*
10 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
11 enhancement award). The Settlement provides that Plaintiff may seek a Class Representative
12 Service Payment of \$15,000.00. This amount is entirely reasonable given Plaintiff’s efforts in this
13 action and the risks he undertook on behalf of Class Members. DS, ¶ 46. Plaintiff has devoted
14 many hours advancing the interests of the Settlement Class. Plaintiff has done this by, among
15 other things, retaining experienced counsel, providing them with information about his work
16 history with Defendant and Defendant’s policies and practices with respect to the wage and hour
17 claims at issue, participating in mediation, and being actively involved in the settlement process
18 to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed
19 to significant risks, including the risk of an order to pay Defendant’s attorneys’ fees and costs if
20 this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that
21 Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
22 Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary
23 approval. DS, ¶ 46.

24 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
25 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
26 **AND REASONABLE**

27 With regard to the settlement administration costs provision, it is reasonable. Before
28 agreeing to Simpluris, Inc. and its bid of \$6,000.00, the Parties sought and reviewed bids from
other reputable third-party administrators which provided higher bids. DS, ¶ 49-50, Exs. 10-12.
Thus, the settlement administration costs provision should be given preliminary approval.

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1 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
2 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
3 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
4 **EXERCISE THEIR RIGHTS**

5 This Court should approve the proposed plans for giving notice to the Settlement Class
6 and administering the Settlement. The standard for determining the adequacy of notice is whether
7 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
8 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
9 measures to ensure that as many Class Members as practicable receive actual notice of the
10 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
11 the Notice by First Class U.S. mail only. Settlement, ¶ 4.4.1. Although there are current employee
12 Class Members, it is uncertain whether Defendant’s records of their contact information include
13 email addresses and Class Members, who perform all of their work away from a desk, are not in
14 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
15 DS, ¶ 48.

16 With respect to its content, “[The] notice given to the class must fairly apprise the class
17 members of the terms of the proposed compromise and of the options open to dissenting class
18 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
19 The purpose of the notice in class settlement context is to give class members sufficient
20 information to decide whether they should accept the benefits offered, opt out and pursue their
21 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
22 Class Members with all pertinent information that they need to fully evaluate their options and
23 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
24 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
25 Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
26 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
27 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
28 individual Settlement Class Member’s estimated payment. Additionally, the Class Notice will
include the number of Work Weeks a Class Member had during the Class Period. Accordingly,
the Notice should be approved because it describes the Settlement with sufficient clarity and
specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 48.



1 **XI. CONCLUSION**

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

4 Respectfully submitted,

6 THE SPIVAK LAW FIRM

7 Dated: February 21, 2023

8 By: 
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