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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT (SPRING STREET COURTHOUSE)

MICHAEL GARCIA JUAREZ, an individual
on behalf of himself and all similarly situated
employees,

Plaintiff,

v.

MARAN, INC., a Delaware Corporation;
DAVID GREENBERG, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 21STCV29894

[ASSIGNED FOR ALL PURPOSES TO
HON. ELIHU M. BERLE, DEPT. 6]

CLASS ACTION

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed Concurrently with Declaration of Grant
Joseph Savoy, Esq.; Declaration of Michael Garcia
Juarez; Declaration of Jamie Y. Lee; and
[Proposed] Order]*

Date: October 21, 2022

Time: 9:00am

Dept.: 6

Judge: Hon. Elihu M. Berle

Action Filed: August 12, 2021

Trial Date: None Set

1
2 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that, on October 21, 2022, at 9:00 AM, or as soon thereafter as this
4 matter may be heard, in Department 6 of the Los Angeles County Superior Court, located at 312 N.
5 Spring Street, Los Angeles, CA 90012, Plaintiff Michael Garcia Juarez (“Garcia” or “Plaintiff”), will,
6 and hereby does, move this Court for preliminary approval of the Joint Stipulation and Settlement of
7 Class Action and PAGA Settlement reached by the parties in the above-captioned litigation.

8 The motion will be based upon this Notice, the attached Memorandum of Points and Authorities,
9 the accompanying Declarations of Grant Joseph Savoy, Michael Garcia Juarez, and Jamie Y. Lee, the
10 Joint Stipulation and Settlement of Class Action and PAGA Settlement, the Notice of Class Settlement,
11 the complete files and records of this case, and any other evidence or oral argument which may be
12 considered by the Court at the time of the hearing.

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14 Dated: September 22, 2022

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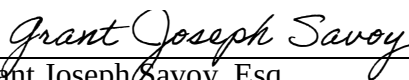
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16 Grant Joseph Savoy, Esq.
17 Shoham J. Solouki, Esq.
18 Attorneys for Plaintiff MICHAEL GARCIA
19 JUAREZ, And Those Similarly Situated
20 Current and Former Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion is brought by Plaintiff MICHAEL GARCIA JUAREZ (“Garcia” or “Plaintiff”), an
4 individual on behalf of himself and all others similarly situated, seeking approval of the Joint Stipulation
5 and Settlement of Class Action and PAGA Settlement entered into by Plaintiff, on the one hand, and
6 Defendant MARAN, INC., a California Corporation (“Maran” or “Defendant”), on the other, seeking to
7 settle all class claims and Private Attorney General Act (“PAGA”) representative claims brought by
8 Plaintiff on behalf of all current and former hourly employees of Defendant in the above-captioned Action.

9 The instant action (*Michael Garcia Juarez, et al. v. Maran, Inc., et al.*) 21STCV29894 (the
10 “Action”) is a wage and hour class action and Private Attorney General Act representative action brought
11 on behalf of all current and former hourly non-exempt employees of Defendant, employed by Defendant in
12 the State of California during the class period.

13 The Action primarily alleges that Defendant failed to provide Plaintiff and the class he seeks to
14 represent with legally required meal and rest periods, failed to pay their overtime and off-the-clock wages,
15 failed to maintain required employment records, provided inaccurate wage statements, and failed to timely
16 compensate former employees for all wages owed upon separation of employment. As mentioned above,
17 Plaintiff and Defendant (collectively, the “Parties”) have entered into a Joint Stipulation and Settlement of
18 Class Action and PAGA Settlement¹ (“Settlement” or “Agreement” or “Stipulation”), which provides for a
19 Maximum Settlement Amount of Two Hundred and Twenty Thousand Dollars (\$220,000.00). Pursuant to
20 the Settlement, Plaintiff now moves for (1) preliminary approval of the Settlement, and (2) conditional
21 certification of the Settlement Class.

22 The Settlement Class is composed of approximately Fifteen (15) current and former employees of
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24
25 ¹ The stipulations and concessions contained in the Stipulation and in this Motion,
26 whether express or implied, are made closely and exclusively for the purpose of
27 resolving this lawsuit and facilitating this settlement. Should this settlement not
28 be preliminarily and/or finally approved by the Court for any reason, or is otherwise
terminated for any reason, the stipulations and other concessions made by each Party
individually or collectively shall be null and void and the lawsuit shall revert to

1 Defendant working as hourly non-exempt employees, in the State of California at any time from August
2 12, 2017 through the date of preliminary approval. The proposed settlement is fair, adequate, and
3 reasonable, and conditional certification of the Settlement Class is appropriate because the requirements of
4 California Code of Civil Procedure § 382 are satisfied. Plaintiff respectfully requests that the Court
5 preliminarily approve this settlement and set a hearing date to consider whether to grant final approval of
6 the Settlement, at which time the Court will consider the request for attorney fees, costs, and the Class
7 Representative Service Award.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 The Action was filed on August 12, 2021, and originally alleged the following causes of action: (1)
10 failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay
11 overtime wages; (4) failure to pay minimum wage; (5) failure to timely pay wages; (6) failure to pay all
12 wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to
13 furnish accurate itemized statements; (9) failure to indemnify employees for necessary expenditures
14 incurred in discharge of duties; (10) all claims for unfair business practices. On or about May 23, 2022, via
15 joint stipulation, Plaintiff filed a First Amended Complaint adding an additional 11th cause of action under
16 the California Private Attorneys General Act of 2004 (“FAC,” “Complaint,” or “Operative Complaint”).
17 (*Declaration of Grant Joseph Savoy, Esq.* (“*Savoy Decl.*”), at ¶ 3, 4.)

18 Plaintiff Garcia is a former non-exempt employee of Defendant, who worked for Defendant as an
19 hourly warehouse worker tasked with handling packaging and shipping orders with FedEx and UPS, and
20 was also tasked with various other duties, such as loading and unloading forklifts and preparing goods
21 for shipment. (*Savoy Decl.*, at ¶ 5.)

22 Defendant Maran engages in the business of manufacturing and shipping clothing goods for women
23 and children. There are approximately Fifteen (15) current and former employees of Defendant who are
24 eligible to participate in the Settlement. (*Savoy Decl.*, at ¶ 7.)

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its status with respect to any and all matters encompassed or embraced in the
28 Stipulation as they existed prior to the Parties entering into the Stipulation.

1 **III. SUMMARY OF THE SETTLEMENT²**

2 **A. Settlement Negotiations**

3 On April 28, 2022, the Parties attended a mediation session with Joel Grossman, Esq., an
4 experienced class action mediator. In anticipation of the mediation, the Parties represent that they
5 conducted significant investigation and discovery of the facts and law. Defendant informally produced,
6 among other things, hundreds of pages class sample pay data, class sample time data, Defendant's relevant
7 policies and procedures pertaining to the claims raised in the Complaint, and Plaintiff's personnel file
8 (inclusive of Plaintiff's time and payroll records). As part of Defendant's production, Class Counsel
9 represents it also reviewed time records, payroll records, and information relating to the size and scope of
10 the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay
11 periods in the Class Period. The Parties agree that the above-described investigation and evaluation, as well
12 as the information exchanged during the settlement negotiations, were more than sufficient to assess the
13 merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.
14 (*Savoy Decl.*, at ¶ 8.)

15 At this mediation, the Parties discussed Plaintiff's claims, theories for class certification and
16 Defendant's defenses thereto. The Parties also analyzed the potential exposure of Defendant on Plaintiff's
17 claims, Defendant's potential liability for penalties and interest, as well as the potential risks associated
18 with litigating this Action through a contested class certification, trial, and potential appeal(s). The
19 mediation lasted the entire day and allowed the Parties to better understand each other's respective
20 positions as to the claims, defenses, and Defendant's potential exposure to liability. The parties'
21 negotiations resulted in an agreement to resolve the Action based on the terms set forth herein for the
22 Maximum Settlement Amount of Two Hundred Twenty Thousand U.S. Dollars (\$220,000.00). (*Savoy*
23 *Decl.*, at ¶ 9.) A true and accurate copy of the Agreement is attached to the Declaration of Grant Joseph
24 Savoy, Esq. as **Exhibit "A"** thereto.

25 **B. Definition of Settlement Class**

26 "Settlement Class" or "Class" or "Class Members" means all current and former non-exempt
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1 California employees who worked for Defendant at any time from August 12, 2017 until the date of
2 preliminary approval. The Class is estimated to consist of 15 persons with an estimated 2,288 workweeks,
3 and includes 11 “PAGA Aggrieved Employees”, defined as all nonexempt Class Members in California
4 employed at any time from August 11, 2020 until the date of preliminary approval of the Joint Stipulation
5 of Class Action and PAGA Settlement, who worked an estimated 464 PAGA pay periods. (*Settlement*,
6 sections 1.3, 1.20.)

7 **C. Settlement Terms**

8 In exchange for a release of claims against Defendant, as set forth in the Settlement, the payment
9 terms of the Settlement are as follows:

10 1. The “Maximum Settlement Amount” or “MSA” refers to the maximum total
11 payment Defendant shall be obligated to make in the amount of \$220,000.00 pursuant to this Settlement.
12 The Maximum Settlement Amount shall include (a) attorneys’ fees of up to \$73,333.33, (b) Plaintiff’s
13 reasonable litigation costs and expenses up to \$25,000.00, (c) reasonable third party administration costs in
14 an amount not to exceed \$3,750.00, (d) a PAGA Penalty Payment of \$41,000.00, of which \$30,750.00 will
15 be paid to the Labor Workforce Development Agency, representing 75% of PAGA civil penalties, with the
16 remaining 25%, \$10,250.00, to be distributed among the PAGA Aggrieved Employees (“Individual PAGA
17 Payment Amount”), (e) a class representative Service Payment in the amount of \$7,500.00, and Net
18 Settlement Amount as described in Paragraph 1.21 of the Settlement and Paragraph 2 herein. Defendant’s
19 share of any employer-payroll taxes attributed to Individual Payment Amounts shall be paid separately and
20 in addition to the Maximum Settlement Amount, and shall be determined by the Settlement Administrator.
21 (*Settlement*, sections 1.20.) Subject to Court approval, this amount shall be allocated as follows:

22 2. The “Net Settlement Amount” or “NSA” is the remaining portion of the Maximum
23 Settlement Amount after deduction of the court-approved attorneys’ fees and costs, including any attorney
24 liens, Settlement Administration Costs, the payment to the Labor Workforce Development Agency in the
25 amount of \$30,750.00 (representing 75% of the PAGA Penalty Payment), and the Class Representative’s
26 Service Payment. The Net Settlement Amount will be attributed to the portion of Individual Payment
27 Amounts and distributed to Settlement Class Members and the PAGA Aggrieved Employees, as described
28

1 in Paragraph 4.2 of the Settlement Agreement. (*Settlement*, sections 1.21, 4.2.)

2 a. Subject to Court approval, the Settlement Administrator will pay an
3 “Individual Payment Amount” from the NSA to each Participating Class Member as follows:

4 Each Class Member’s Individual Payment Amount shall be calculated by (i) dividing the
5 Settlement Class Member’s total number of workweeks worked for Defendant in California during the
6 Class Period by the total number of workweeks worked by all Settlement Class Members for Defendant
7 during the Class Period, and (ii) multiplying that pro rata share by the allocated amount of the Net
8 Settlement Amount. Any workweeks during the Class Period in which a Settlement Class Member did not
9 actually work (for example, while on a leave of absence, *etc.*) are not included in calculating that
10 Settlement Class Member’s Individual Payment Amount. The calculation of a Settlement Class Member’s
11 total workweeks worked in California shall be construed from Defendant’s records. Each Settlement Class
12 Member’s Individual Payment Amount shall be distributed to that Settlement Class Member, less
13 applicable withholdings attributed to the portion of Individual Payment Amounts designated as wages, as
14 described in Paragraph 4.2.4(a) of the Settlement Agreement. Similarly, each Class Member’s Individual
15 PAGA Payment Amount, where applicable, shall be calculated by (i) dividing the Aggrieved Employee’s
16 total number of PAGA pay periods worked for Defendant in California during the PAGA Period by the
17 total number of workweeks worked by all Aggrieved Employees who worked for Defendant during the
18 PAGA Period, and (ii) multiplying that pro rata share by the allocated amount of the Net PAGA Settlement
19 Amount. Any pay periods during the PAGA Period in which a PAGA Aggrieved Employee did not
20 actually work (for example, while on a leave of absence, *etc.*) are not included in calculating that
21 Settlement Class Member’s Individual PAGA Payment Amount. The calculation of the Aggrieved
22 Employee’s total PAGA pay periods worked in California shall be construed from Defendant’s records.
23 (*Settlement*, sections 1.19, 4.2.2.) Each Settlement Class Member’s Individual Payment Amount (including
24 Individual PAGA Payment Amounts) shall be distributed as follows:

25 (a) Thirty percent (30%) of the Individual Payment Amounts shall be allocated for payment of
26 disputed wages to Settlement Class Members. For this portion of the Individual Payment Amounts,
27 Settlement Class Members shall receive a W-2 form.

(b) Seventy percent (70%) of the Individual Payment Amounts shall be allocated for disputed penalties and interest. This portion of the Individual Payment Amounts consists of other income, not wages, for which Settlement Class Members shall receive a 1099 form.

(c) The Individual PAGA Payment Amounts shall be counted as penalties rather than wages for tax purposes, for which the Settlement Class Member shall receive a 1099 form.
(*Settlement*, sections 4.2.4.)

b. After one-hundred eighty (180) days of issuance, funds from undeposited checks, along with any amounts that would have been paid to Class members who request exclusion, will be delivered to the California State Controller (Unclaimed Property) by the Settlement Administrator, or shall otherwise be distributed as ordered by the Court. The failure by any Class Member to claim or deposit any check issued by the Settlement Administrator shall have no effect on that Class Member's release of all Released Claims (as defined in paragraph 1.27 of the Settlement). The Settlement Administrator shall also enable Class Counsel to file a declaration attesting to the distribution of the Maximum Settlement Amount and the distribution of any "residual" funds as further ordered by the Court. Also, the Court may issue an appropriate Order, transmitting any unclaimed funds that would have otherwise been payable to Class Members in settlement checks that remain uncashed, along with any accrued interest thereon, to the California State Controller (Unclaimed Property). (*Settlement*, section 4.11.4.)

D. Settlement Administrator Notice to Class Members, Objections, Opt-Out Rights

1. Settlement Administrator

"Settlement Administrator" means and refers to Phoenix Settlement Administrators, the entity that will be responsible for the administration of the Settlement and related matters as described in this Settlement. (*Settlement*, section 1.30.)

Subsequent to entering into the Settlement Agreement, Class Counsel received quotes for class settlement administration and determined the quote and services provided by Phoenix Class Action Administrators ("Phoenix") to be the most reasonable. (*Savoy Decl.* ¶ 10.) A true and accurate copy of the Phoenix settlement administration quote and associated services is attached to the *Declaration of Grant Joseph Savoy, Esq.*, as Exhibit "B."

1 In addition to providing Notice of Settlement (“Notice;” **Exhibit 2** to the Settlement Agreement) to
2 Class Members, as described in Section 4.5 of the Agreement, the Settlement Administrator will be
3 responsible for the administration of the Settlement, which shall also include: (a) Setting up the Qualified
4 Settlement Fund (“QSF”) for the benefit of the Settlement Class members and from which the Settlement
5 payments shall be made (*Settlement*, section 1.26); (b) Determining Defendant’s share of any employer-
6 payroll taxes attributed to Individual Payment Amounts, which shall be paid separately and in addition to
7 the Maximum Settlement Amount (*Settlement*, section 1.20), and remit and report the applicable portions
8 of the payroll tax payment to the appropriate taxing authorities on a timely basis (*Settlement*, section 4.3.1);
9 and (c) Furnishing its own Employer ID Number and calculate all settlement checks and payroll deductions
10 based on the information that will be provided by Defendant (*Settlement*, 4.3.1).

11 **2. Notice to the Settlement Class Members**

12 The Settlement Administrator shall disseminate the Notice in the manner described below, with the
13 Settlement Administration Costs being paid from the Maximum Settlement Amount. (*Settlement*, section
14 4.5.) No later than twenty one (21) days after the entry of the Preliminary Approval Order, Defendant shall
15 provide the Settlement Administrator with the following information for each Class Member: name, last
16 known mailing address, last known email address (if available), last known telephone number, social
17 security number, and the total number of workweeks in California as a nonexempt employee during the
18 Class Period. No later than ten (10) calendar days after receipt of such Class Member information, the
19 Settlement Administrator will perform a national change of address (“NCOA”) search, update the
20 addresses per the results of the NCOA search, and then mail the Notice (as defined in section 1.22 of the
21 Settlement) to each Class Member by first-class mail, postage prepaid and electronic mail. (*Settlement*,
22 section 4.5.1.) As reflected in the quote by Phoenix Administrators, attached as Exhibit B to Savoy
23 Declaration, all class notices will be sent in Spanish, as well as English.

24 In the event that a Notice sent by mail is returned as undeliverable, the Settlement Administrator
25 will make reasonable efforts to obtain a valid mailing address by using the Social Security number of the
26 Class Member and standard skip tracing devices to conduct a search for a correct mailing address and by
27 contacting Class Counsel and Defense Counsel. Such efforts shall include conducting a reasonable search
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1 for the correct address at a cost of up to \$1.25 per Class Member whose Notice is returned as undeliverable
2 and contacting Defendant for an updated address for current employees. Following each search that results
3 in a corrected address, the Settlement Administrator shall promptly resend the Notice to the Class Member
4 by first-class mail, postage prepaid. Following each search that results in no corrected address, the
5 Settlement Administrator shall resend the Notice to the Class Member, postage prepaid, to the original
6 address; only one (1) such re-mailing to the same address shall ever occur, per address. The Settlement
7 Administrator shall make one (1) attempt to re-mail the Notice within five (5) calendar days from the date
8 of the return of the Notice. In any event, such efforts must be completed no less than fifteen (15) business
9 days before the date of the Final Approval and Fairness Hearing. (*Settlement*, section 4.5.2.)

10 If Defendant and the Settlement Administrator determine, based upon further review of available
11 data, that a person previously identified as being a Class Member should not be so included or identify a
12 person who should have been included as a Class Member but was not so included, Defendant and the
13 Settlement Administrator shall promptly delete or add such person as appropriate and immediately notify
14 Class Counsel prior to such deletions or additions (and the reasons thereof). (*Settlement*, section 4.5.3.)

15 No later than the filing of Plaintiff's Motion for Final Approval of Class Action Settlement, the
16 Settlement Administrator shall enable Class Counsel to file a declaration under penalty of perjury advising
17 the Court that the requirements of Sections 4.5.1 and 4.5.2 of the Settlement have been fulfilled. The
18 Settlement Administrator shall provide such other reports as requested by counsel for the Parties or the
19 Court, including any required declarations in support of preliminary and final approval of the Settlement.
20 (*Settlement*, section 4.5.5.)

21 Compliance with these procedures shall constitute due and sufficient notice to Class Members of
22 this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done
23 by, the Parties, Class Counsel, and Defense Counsel to provide notice of the proposed Settlement. Other
24 than the obligations set forth in this Agreement, Defendant shall have no additional obligation to identify or
25 locate any Class Member or have any liability in connection with the provision of information to the
26 Settlement Administrator. (*Settlement*, sections 4.5.6, 4.5.7.)

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3. Responses to Notice

For Class Members who are re-mailed the Notice due to it being undeliverable, the deadline by which to submit a Dispute, Request for Exclusion, or Objection will be the later of: (a) ten (10) calendar days from the date the Notice was re-mailed; or (b) the Response Deadline. (*Settlement*, section 4.6.1.)

The Notice shall inform Class Members of the number of workweeks they worked as non-exempt employees in California during the Class Period and PAGA Period based on Defendant's records. Class Members may dispute this information by providing the Settlement Administrator with additional information and documentation postmarked on or before the Response Deadline ("**Dispute**"). A Dispute must be signed by the Class Member, reference the case name and case number (21STCV29894), and state all of the following: (1) the full name of the Class Member; (2) the number of workweeks the Class Member contends is correct; and (3) attach any documentation support his or her contended number of workweeks. If there is a Dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. Any Disputes not resolved by the Settlement Administrator or the Parties will be resolved by the Court. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the Disputes without the necessity of involving the Court. Neither the Parties nor any of their counsel shall discourage any Class Member from submitting a Dispute. (*Settlement*, section 4.6.2.)

a. Opt-Outs, Requests for Exclusion

Class Members, with the exception of the Class Representative, may opt-out of the Settlement. Class Members who wish to exercise this option must submit a Request for Exclusion Form ("Request for Exclusion") as provided in this paragraph and Section 4.6.3 of the Settlement. The Request for Exclusion must include the Class Member's full name, address, and telephone number, the name and case number of the Action, and shall be signed by the Class Member. Unsigned Requests for Exclusion, those that do not comply with the requirements listed herein, or those postmarked after the Response Deadline will not be honored unless mutually agreed to by counsel for all Parties or ordered by the Court. Class Members will have until the Response Deadline (defined as thirty (30) calendar days from the initial mailing of the Notice to Class Members) within which to complete and postmark their Request for Exclusion. The date of the postmark shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted, if the postmark is legible. If the postmark envelope is not legible, then the date the

1 return-mailing envelope is received by the Settlement Administrator shall be the exclusive means to
2 determine whether a Request for Exclusion has been timely submitted. (*Settlement*, section 4.6.3.)

3 By submitting a Request for Exclusion, a Class Member shall be deemed to have exercised his or
4 her option to opt-out of the class action lawsuit. Any member of the Class who requests exclusion from the
5 Settlement will not be entitled to any share of the Settlement, will not be bound by the Settlement, and will
6 not have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and
7 timely Request for Exclusion shall be bound by all terms of the Settlement and the Final Judgment entered
8 in this Action, regardless of whether they otherwise have requested exclusion from the Settlement. The
9 Settlement Administrator shall forward all Requests for Exclusion received to Class Counsel and Defense
10 Counsel within one (1) business day of receipt. Also, not later than the filing of Plaintiff's Motion for Final
11 Approval of Class Action Settlement, the Settlement Administrator shall enable Class Counsel to file the
12 declaration of the Settlement Administrator advising the Court of a complete list of all members of the
13 Class who have timely requested exclusion from the Settlement, and which shall authenticate all Requests
14 for Exclusion received. The Settlement Administrator's declaration shall also include all Requests for
15 Exclusion received as exhibits to the declaration. (*Settlement*, section 4.6.3.)

16 **b. Objections**

17 Any person or entity who does not request exclusion but who wishes to object to the Settlement
18 must submit an Objection Form ("Objection") as provided in this Paragraph. The Objection must be
19 signed by the Settlement Class Member, reference the case name and case number (21STCV29894), and
20 state all of the following: (1) the full name of the Class Member; (2) the dates of employment of the Class
21 Member; (3) the grounds for the objection; (4) any legal briefs, papers, or memoranda the objecting Class
22 Member proposes to submit to the Court; and (5) Class Members who fail to object in the manner specified
23 above still have the right to appear in Court at the Final Approval Hearing to state his or her objections.
(*Settlement*, section 4.6.4.)

24 Class Members will have until the Response Deadline within which to complete and postmark their
25 Objection. If the postmark is not legible, then the date the return-mailing envelope is received by the
26 Settlement Administrator shall be the exclusive means to determine whether the Objection has been timely
27 submitted. (*Settlement*, section 4.6.4.)
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1 Any person or entity who fails to submit such a timely written Objection shall be deemed as having
2 waived his/her objection, unless otherwise ordered by the Court, but shall not be precluded from appearing
3 at the Final Approval and Fairness Hearing should s/he wish to appear. Either of the Parties may file a
4 responsive document to the Objection, or other similar document purporting to object to the Settlement,
5 with the Court no later than five (5) calendar days before the Final Approval and Fairness Hearing. The
6 Settlement Administrator shall forward Class and Defense Counsel copies of all Objections or other
7 documents purporting to object to the Settlement, within one (1) business day of receipt. Also, not later
8 than the filing of Plaintiff's Motion for Final Approval of Class Action Settlement, the Settlement
9 Administrator shall enable Class Counsel to file a declaration under penalty of perjury advising the Court
10 with a complete list of all members of the Class who have submitted objections, and shall authenticate all
11 Objections received. The Settlement Administrator's declaration shall also include all Objections received
12 as exhibits to the declaration. (*Settlement*, section 4.6.4.)

13 If the Class Member does not submit an Objection or appear in Court to object at the Final
14 Approval Hearing, the Class Member shall be deemed to have waived his or her right to object, and shall
15 be foreclosed from making any objections to the Settlement whether by appeal or otherwise. At no time
16 shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to object to
17 the Settlement. The Settlement Administrator shall provide the Parties with weekly updates regarding the
18 status of any Objections. (*Settlement*, section 4.6.4.)

19 **c. Disputes In General**

20 If any individual whose name does not appear on the updated Class list provided to the Settlement
21 Administrator believes that he or she is a member of the Class, he or she shall have the opportunity to
22 dispute his or her exclusion from the Class. If an individual believes he or she is a member of the Class, he
23 or she must notify the Settlement Administrator in writing no later than the Response Deadline. The Parties
24 will meet and confer regarding any such individual(s) in an attempt to reach an agreement as to whether
25 any such individual(s) should be regarded as a member of the Class. If the Parties so agree, the Settlement
26 Administrator will mail a Notice to the individual(s), and treat the individual(s) as a member of the Class
27 for all other purposes. Such an individual will have all of the same rights as any other member of the Class
28 under this Agreement, and shall have up until the latter of ten (10) business days from the mailing of the

1 Notice or the Response Deadline in which to submit a Dispute, Request for Exclusion Form, or Objection
2 Form. (*Settlement*, section 4.6.5.)

3 The Settlement Administrator must forward all Disputes to the Parties within one (1) business day
4 of receipt. Defendant shall review and respond to each submitted Dispute regarding the total number of
5 workweeks worked by the Settlement Class Member in California during the Class Period within ten (10)
6 calendar days of receipt, and shall transmit a copy of their response to the Settlement Administrator.
7 Defendant's response shall state whether Defendant agrees with or disputes the information provided by
8 the Class Member and comply with the terms of Sections 4.6.7 and 4.6.8 of the Settlement. (*Settlement*,
9 section 4.6.7.)

10 **4. Final Approval and Fairness Hearing**

11 On the date set forth in the Notice of Settlement, the Court shall hold the Final Approval and
12 Fairness Hearing where objections, if any, may be heard. Defendant reserves its rights to file papers in
13 advance of the Final Approval and Fairness Hearing. (*Settlement*, section 4.8.)

14 At the Final Approval Hearing Class Counsel shall apply to the Court for the Fee and Costs Award
15 as defined herein and in paragraph 1.18 of the Settlement. Class Counsel shall request an award of
16 attorneys' fees for an amount not to exceed \$73,333.33, including satisfaction of any liens and litigation
17 costs actually incurred, in an amount not to exceed \$25,000.00. Defendant agrees not to oppose this
18 request. (*Settlement*, section 4.9.)

19 If the Court approves the Settlement at the Final Approval and Fairness Hearing, the Parties request
20 that the Court enter the Final Judgment (in the form, without material variation, as attached to the
21 Settlement as **Exhibit 1**) after the Maximum Settlement Amount is fully funded. (*Settlement*, section 4.10.)

22 **5. Release of Claims**

23 Releasees:

24 "Releasees" means the Defendant named in the Complaint, together with its past and present
25 officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
26 consultants, insurers, and their respective successors and predecessors in interest, subsidiaries, affiliates,
27 parents, and attorneys, including but not limited to individual Defendant, David Greenberg.

28 Class Representative's Release Claims:

1 “Class Representative’s Released Claims” means all claims, obligations, demands, actions, rights,
2 causes of action, and liabilities against the Releasees (as defined in Paragraph 1.28), based on the facts as
3 set forth in the First Amended Complaint filed on May 23, 2022, whether in law or equity, whether
4 sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or
5 other source of law, whether known or unknown, and whether anticipated or unanticipated, including
6 unknown claims covered by Civil Code § 1542 (as quoted in Paragraph 4.12.3) by the Class
7 Representative, arising during the period from the beginning of the Class Representative’s dates of
8 employment with Defendant to the date on which the Court enters an order granting final approval of this
9 Settlement, for any type of relief, including, without limitation, claims for wages, business expenses,
10 damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated damages, punitive
11 damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief with the sole exception of
12 any claims which cannot be released as a matter of law. The Class Representative’s Released Claims
13 include, but are not limited to, the Released Claims (as defined in Paragraph 1.27) as well as any other
14 claims under any provision of the Fair Labor Standards Act, any provision of the California Labor Code or
15 any applicable California Industrial Welfare Commission Wage Orders, and claims under state or federal
16 discrimination statutes, including, without limitation, the California Fair Employment and Housing Act,
17 California Government Code § 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code § 51 *et*
18 *seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the
19 Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; California’s PAGA (Cal. Labor Code § 2698,
20 *et seq.*), Cal. Bus. and Prof. Code § 17200 *et seq.*; the Employee Retirement Income Security Act of 1974,
21 29 U.S.C. § 1001 *et seq.*; any IWI California Wage Orders and California Code of Regulations, Title 8,
22 section 11000, *et seq.*, and/or any other federal, state or local human rights, civil rights, wage-hour, pension
23 or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or
24 any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral,
25 written or implied from any source), or any claim of intentional or negligent infliction of emotional
26 distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge,
27 defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care,
28 breach of fiduciary duty; and all of their implementing regulations and interpretive guidelines. However,
nothing in this General Release shall prohibit or restrict Class Representative from: (i) providing

1 information to, or otherwise assisting in, an investigation by Congress, the Equal Employment Opportunity
2 Commission or the NLRB, the Securities and Exchange Commission (“SEC”) or any other federal
3 regulatory or law enforcement agency or self-regulatory organization (“SRO”); (ii) testifying, participating,
4 or otherwise assisting in a proceeding relating to an alleged violation of any federal law relating to fraud or
5 any rule or regulation of the SEC or any SRO; or (iii) complying with a lawful subpoena or other legal
6 process, subject to the terms of this Stipulation, including but not limited to the confidentiality provisions
7 herein, and subject to the condition that Class Representative agrees not to seek, or in any way obtain or
8 accept, any monetary award, recovery or settlement therefrom and agrees that he understands that such
9 limitation does not in any way restrict his ability to file and pursue such charge consistent with the
10 confidentiality obligations set forth in this Stipulation; and further provided, however, that Class
11 Representative does not waive any rights with respect to, or release Defendant Releasees from, any claim:

- 12 a. for California Workers’ Compensation benefits (except that Class Representative
13 hereby releases and waives any claims that, as a result of his termination, he is
14 entitled to additional benefits or payments);
- 15 b. for unemployment compensation benefits;
- 16 c. that cannot be released by private contract; or
- 17 d. for breach of the terms of the Stipulation between Class Representative and
18 Defendant.

19 (*Settlement*, section 1.8.)

20 Release by Participating Class Members Who Are Not Aggrieved Employees:

21 All Participating Class Members, on behalf of themselves and their respective former and present
22 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties
23 from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts
24 stated in the Operative Complaint. Participating Class Members do not release any other claims, including
25 claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
26 unemployment insurance, disability, social security, workers’ compensation, or claims based on facts
27 occurring outside the Class Period. (*Settlement*, section 1.27.1.)

1 Release by Non-Participating Class Members Who Are Aggrieved Employees:

2 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on
3 behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
4 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were
5 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
6 Complaint, and the PAGA Notice. (*Settlement*, section 1.27.2.)

7 Additional Terms of Release:

8 Contingent upon full and final payment by Defendant of the Maximum Settlement Amount
9 consistent with section 4.11.1 of the Settlement, the Class Representative and each Class Member shall be
10 deemed to have fully, finally, and forever released the Releasees from all Released Claims. (*Settlement*,
11 section 4.12.1.) In addition, the Class Representative shall be deemed to have fully, finally, and forever
12 released the Releasees from the Class Representative's Released Claims, contingent upon full and final
13 payment by Defendant of the Maximum Settlement Amount consistent with Paragraph 4.11.1 of the
14 Settlement. (*Settlement*, section 4.12.2.) With respect to the Class Representative's Released Claims only,
15 the Class Representative shall be deemed to have expressly waived and relinquished, to the fullest extent
16 permitted by law, the provisions, rights, and benefits she may otherwise have had pursuant to Paragraph
17 1542 of the California Civil Code, which provides as follows:

18 A general release does not extend to claims that the creditor or releasing party does not know or
19 suspect to exist in his or her favor at the time of executing the release and that, if known by him or
20 her, would have materially affected his or her settlement with the debtor or released party.
21 (*Settlement*, section 4.12.3.)

22 **IV. LEGAL ARGUMENT**

23 Any settlement of class litigation must be reviewed and approved by the Court. (Cal. R. Ct. 3.769;
24 Fed. R. Civ. P. 23(e).)³ This is done in two steps: (1) an early (preliminary) review by the trial court, and
25

26 _____
27 ³ The California Supreme Court has authorized California's trial courts to use Federal
28 Rule 23 and cases applying it for guidance in considering class issues. (See
 Vasquez v. Superior Court (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d

1 (2) a final review after notice has been distributed to the Class Members informing them of the terms of the
2 settlement and allowing them to exclude themselves from, participate in and/or object to the settlement.
3 The Manual for Complex Litigation (Third) § 30.41 states:

4 If the preliminary evaluation of the proposed settlement does not disclose grounds
5 to doubt its fairness or other obvious deficiencies, such as unduly preferential
6 treatment of class representatives or of segments of the class, or excessive
7 compensation for attorneys, and appears to fall within the range of possible
8 approval, the court should direct that notice ... be given to the class members of a
9 formal fairness hearing, at which arguments and evidence may be presented in
10 support of and in opposition to the settlement.

11 Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement
12 appears to be within the range of acceptable settlements. (*See Wershba v. Apple Computer* (2001) 91
13 Cal.App.4th 224, 234-35.) “The strength of the findings made by a judge at a preliminary hearing or
14 conference concerning a tentative settlement proposal may vary. The court may find that the settlement
15 proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is
16 presumptively valid subject only to any objections that may be raised at a final hearing.” (4 Alba Conte &
17 Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

18 The law favors settlement, particularly in class actions and other complex cases in which substantial
19 resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle*, 955
20 F.2d at 1276; *Potter v Pacific Coast Lumber Company* (1951) 37 Cal. 2d. 592, 602-603.; 4 *Newberg on*
21 *Class Actions* § 11.41.) To grant preliminary approval of this Class Action Settlement, the Court need find
22 only that the settlement falls within the “range of reasonableness.” (*North County Contractor’s Ass. Inc. v.*
23 *Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-1090.)

24 In determining whether a class settlement is fair, adequate and reasonable, courts must consider the
25 following relevant factors: the strength of the plaintiff’s case; the risk, expense, complexity and likely
26 duration of further litigation; the risk of maintaining class action status through trial; the amount of offered
27 settlement; the extent of discovery completed and the range of the proceedings; and the experience and

28 126, 145-146.) Where appropriate, therefore, Plaintiff cites Federal Rule 23 and
federal case law in addition to California law.

views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case. (*Clark*, 175 Cal. App. 4th at 799; *Wershba*, 91 Cal. App. 4th at 245.)

Furthermore, courts must give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998), 150 F.3d 1011, 1027.)

A. The Terms Of The Proposed Settlement Are Fair

A preliminary review of the terms of the Settlement provides no reason to doubt its fairness. Indeed, this Court should begin its analysis with a presumption that the proposed settlement is fair. A presumption of fairness exists where: “1) the settlement is reached through arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small.” (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply at the preliminary approval stage; the percentage of objectors is determinable only at the final approval stage.

1. The Settlement Was Reached Through Arm’s-Length Bargaining, Not Through Fraud or Collusion

The Settlement was reached following extensive negotiations during and after a private mediation with professional mediator Joel Grossman, Esq. The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. The parties went into the mediation session willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 8, 9, 23, 28.)

During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that this case could be worth a substantial amount of money. However, as the mediation progressed, Defendant

1 presented their arguments as to various issues, and it became apparent that many issues would be highly
2 disputed and could pose a risk to both parties in going forward with litigation. As a result, the parties
3 agreed to resolve this matter. (*Savoy Decl.* ¶ 18.)

4 Moreover, Mr. Grossman presided over the back and forth exchange of information, and helped
5 guide the parties towards what he believed, based on his experience, was a reasonable resolution given the
6 disputed issues of liability. (*Savoy Decl.* ¶ 19.)

7 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
8 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
9 *Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
10 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
11 proponents, particularly where, as here, settlement has been reached with the participation of experienced
12 counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
13 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*
14 (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp.
15 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

16 **2. Investigation and Discovery Were Sufficient For The Parties To Evaluate The Risks** 17 **Intelligently**

18 Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by
19 Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to
20 mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to
21 engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents
22 and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 29.)

23 Defendant Maran produced numerous documents relating to its policies, practices, and procedures
24 regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest
25 period policies, meal premiums paid, and payroll and operational policies. As part of Defendant's
26 production, Class Counsel represents it also reviewed time records, pay records, and information relating to
27 the size and scope of the Class, as well as data permitting Class Counsel to understand the number of
28 workweeks and pay periods in the Class Period. The Parties agree that the above-described investigation

1 and evaluation, as well as the information exchanged during the settlement negotiations, are more than
2 sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and
3 equitable basis. (*Savoy Decl.*, at ¶ 8, 29.)

4 Through discovery and investigation, my office was able to identify multiple current and former
5 employees of Defendant that provided valuable information that allowed my office and our expert to clarify
6 any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 31.)

7 For example, Defendants' written records did not indicate when or if a majority of the meal breaks
8 had been taken by a given employee during a given work shift, leading to the rebuttable presumption that
9 no meal breaks were taken on those occasions. Through information and statements provided by Plaintiff
10 and other employees of Defendant, it was determined that an overwhelming majority of the non-exempt
11 hourly employees that worked for Defendant worked identical shifts and schedules; therefore, most, if not
12 all, meal breaks for the shift were necessarily given at the same time. However, when the business
13 workload was greater than normal, or a shift had a fewer employees than necessary to handle the day's
14 workload, preset meal break periods shifted. When this did occur, employees were required to work longer
15 continuous periods or partially cover missing employee's duties during the present employee's scheduled
16 meal period. This resulted in either a late, missed, or shortened meal period. (*Savoy Decl.*, at ¶ 32.) This
17 information could not have been gleaned from the face of the payroll and timekeeping records themselves.

18 Plaintiff's statistical experts analyzed this information, including data for approximately 2,288
19 unique workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class
20 Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in
21 negotiating the proposed Settlement. (*Savoy Decl.*, at ¶ 33.)

22 **3. Counsel Is Experienced In Similar Litigation**

23 Furthermore, the settlement negotiations were conducted by highly capable and experienced
24 counsel. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and
25 effective advocacy for their clients, and they are experienced in handling complex wage and hour class
26 action litigation. (*Savoy Decl.*, at ¶ 43-50.) Although Plaintiff and Class Counsel were prepared to litigate
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1 the claims in this action, they support the proposed Settlement as being in the best interests of the Class
2 Members. (*Savoy Decl.*, at ¶ 28.)

3 **B. The Settlement Falls Well Within The “Ballpark” of Reasonableness**

4 The Court must make an “independent assessment of the reasonableness of the terms of the
5 settlement” prior to granting preliminary and final approval. (*Clark v. American Residential Services LLC*
6 (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-28,
7 130, 133.) To do so requires the Parties to submit “basic information about the nature and magnitude of the
8 claims in question and the basis for concluding that the consideration being paid for the release of those
9 claims represents a reasonable compromise.” (*Clark, supra*, 175 Cal.App.4th at 800.) However, the Court
10 should *not* “attempt to decide the merits of the case or to substitute its evaluation of the most appropriate
11 settlement for that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at 133.)

12 **1. Settlement Amount Is Fair, Just, and Reasonable**

13 Plaintiff and Plaintiff’s counsel remain confident of the merits of Plaintiff’s claims. Plaintiff and
14 Plaintiff’s counsel considered several factors in reaching the decision to settle at this point in the litigation.
15 Plaintiff’s counsel has calculated the maximum damages of the Class Members, excluding solely derivative
16 claims, to be approximately Eight Hundred Seven Thousand Nine Hundred and Forty Dollars
17 (\$807,940.00) and believes this amount would be the maximum damage potential should the case proceed
18 to trial. (*Savoy Decl.*, at ¶ 12.)

19 Given the maximum potential damages, the settlement sum of Two Hundred and Twenty Thousand
20 Dollars (\$220,000.00) is reasonable considering the substantial risks entailed by this case. My firm
21 estimates a Sixty Percent (60%) likelihood of obtaining and maintaining certification of Plaintiff’s claims,
22 which reduces the value of these claims. My office further estimates that there is a Sixty Percent (60%)
23 chance that Plaintiff will prevail at trial on his individual and class claims, further reducing the value of the
24 claims. Taking these two risk factors into account, a more realistic damages recovery analysis brings
25 values the instant action at approximately \$290,858.40. The MSA is approximately Seventy-Six Percent
26 (76%) of the revised and reduced total damages exposure. The significant risk that this Court may deny
27 class certification is obviated by the Settlement. Moreover, continued litigation would very likely reduce
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1 and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class
2 Members will receive timely relief and avoid the risk of an unfavorable judgment and avoids the possibility
3 of having all, or a portion, of the class and representative claims lost to dispositive motion, which was not
4 included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*, at ¶ 14.)

5 Defendant, on the other hand, strongly contends that its policies and practices do not violate any
6 laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiff’s claims
7 that he and class members were not paid for all hours worked is factually incorrect. It is Defendant’s
8 position that there would be no liability for unpaid wages and overtime, and therefore, the derivative claims
9 of waiting time penalties, untimely wage payments and inaccurate wage statements therefore also fail.
10 Defendant further contends that it provided meal and rest breaks as required by law and is not required to
11 ensure that employees took every meal and rest period made available to them. (*Brinker Restaurant Corp.*
12 *v. Superior Court*, 53 Cal. 4th 1004 (2012).) Even if the data were to show that meal periods were not
13 taken, time records alone cannot establish a meal break violation under California law. (*See Donohue v.*
14 *AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1088 n. 25, as modified (Dec. 28, 2018), review granted, 2019
15 WL 1388808, at *1 (Cal. Mar. 27, 2019) (finding that “an employer’s time records may . . . [only] reflect a
16 section 226.7 violation” in the class certification context, and not on the merits either at trial or on
17 summary judgment); *Brown v. Federal Express Corp.*, 249 F.R.D. 580, 587 (C.D. Cal. 2008) (time records
18 could not prove break claims as they would not provide reason for missed breaks).)

19 Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims,
20 particularly because the claims would require an individualized inquiry. (*See Koval v. Pacific Bell*
21 *Telephone Co.*, 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff’s
22 failure to demonstrate that allegedly unlawful policies were consistently applied “create[d] a shifting
23 kaleidoscope of liability determinations that render this case unsuitable for class action treatment”); *Dailey*
24 *v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period
25 and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest
26 breaks where there was no evidence of a uniform policy showing that the Company required the employees
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1 to forego breaks).) In such an event, there would be no recovery for Class Members at all. A discount was
2 required at this stage of the litigation for settlement purposes based on these risk factors.

3 The significant risks that this Court may deny class certification or rule against Plaintiff on the
4 merits are obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation
5 would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the
6 proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable
7 judgment.

8 Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as
9 to each cause of action. It must be noted that the lion share of the non-derivative and non-penalty class
10 damages are attributable to unrecorded meal periods (approximately 56% of all non-derivative, non-penalty
11 damages). As noted, the uniform scheduling of all Class Members utilized by Defendant's business
12 operations necessarily required all employees in a given shift to take a meal break at the same time. It was
13 largely those employees that were required to cover absent employee's work duties, or those employees
14 working during days with abnormally heavy workloads, that suffered meal period violations, potentially
15 drastically reducing Plaintiff's asserted class damages. (*Savoy Decl.*, at ¶ 15.)

16 Plaintiff also recognizes that proving the amount of wages due to each individual Class Member,
17 while feasible, would be an expensive, time-consuming, and extremely uncertain proposition. (*Savoy Decl.*,
18 at ¶ 16.)

19 Assuming full participation of all 15 employees in the settlement, we estimate that each class
20 member will recover on average over Five Thousand Three Hundred Eleven Dollars and Eleven Cents
21 (\$5,311.11). (\$79,666.67 Net Settlement / 15 Class members ~ \$5,311.11). The average workweek
22 recovery from the NSF is Thirty Four Dollars and Eight-Two Cents (\$34.82). The maximum recovery for
23 a class member is approximately Seven Thousand Two Hundred and Forty-Two Dollars and Forty-Two
24 Cents (\$7,242.42) (class member(s) who worked the maximum 208 workweeks). The minimum recovery
25 for a class member is approximately Thirty Four Dollars and Eight-Two Cents (\$34.82) (class member(s)
26 who worked 1 workweek out of the total class period). On average, this amount is far from insignificant,
27 especially because most class members will never pursue their individual claims. Moreover, the Class
28

Members are longer-term employees of Defendant, working most, if not all, of the eligible workweeks and will receive close to the average recover of Five Thousand Three Hundred Eleven Dollars and Eleven Cents (\$5,311.11). (*Savoy Decl.*, at ¶ 22.)

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is clear that the Maximum settlement amount is fair, adequate, and reasonable. (*Savoy Decl.*, at ¶ 17.)

2. Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable

Plaintiff's expert statistician has calculated the number of unique PAGA pay periods to be 464. At a 100% violation rate (i.e. one Labor Code violation per unique pay period), the Defendant's maximum PAGA penalty exposure is approximately Ninety-One Thousand Three Hundred Dollars (\$91,300.00). As noted, Plaintiff estimates a sixty percent (60%) chance of beating a motion for summary judgment/adjudication on the underlying Labor Code causes of action, as well as a 60% chance of a favorable outcome at trial. This reduces Defendant's potential PAGA penalty exposure to Thirty-Two Thousand Eight Hundred Sixty-Eight Dollars (\$32,868.00). However, as explained below, this number must be greatly reduced when the facts and evidence presented during litigation and mediation are taken into account. Plaintiff asserts that the Forty-One Thousand Dollars (\$41,000.00) attributed to PAGA penalties, which is One Hundred and Twenty-Five percent (125%) of the reduced/adjusted PAGA exposure, is more than fair, just, and reasonable. (*Savoy Decl.*, 24.)

Through discovery and investigation, as well as further evidence presented at mediation, it became abundantly clear that the majority of all Labor Code violations occurred within the first three (3) years of the alleged class period. Defendant's meal and rest break policies for the entire class period appear facially valid. Based on timekeeping records and interviews with Plaintiff and aggrieved employees, Defendant's apparent practice and enforcement of said policies appears to have changed during the class period. Plaintiff's PAGA penalty claims are based primarily on unrecorded meal breaks, as the majority of the class timekeeping records fail to evidence recorded meal periods from for the applicable PAGA period. (*Savoy Decl.*, 25.)

1 For those unrecorded and short meal periods occurring during the PAGA period, Defendant
2 provided a rebuttal to the presumption that no recorded meal period is presumed to mean no meal period
3 was taken. The uniform shift and schedule configuration of Defendant's business operations necessarily
4 requires all employees in a given shift to take a meal break at the same time. Information was provided
5 that all employees working on a given assembly line did in fact take a meal break at the same time. It was
6 largely those employees that were required to cover an absent employee's work duties that suffered meal
7 period violations, drastically reducing Plaintiff's asserted meal break violation rate. Based on this
8 information and information obtained from Plaintiff and other aggrieved employees, Plaintiff was
9 required to reduce alleged penalties associated with meal break violations during the PAGA period.
10 (*Savoy Decl.*, at ¶ 26.)

11 Due to the violation rate and trouble in proving the underlying meal break violations during the
12 applicable PAGA period, Plaintiff believes it is proper to attribute approximately Nineteen percent (19%)
13 of the Net Settlement Amount to PAGA penalties. Moreover, attributing a larger portion of the
14 settlement to non-PAGA penalties insures that a greater amount of the Net Settlement Amount will go to
15 the putative class. (*Savoy Decl.*, at ¶ 27.)

16 **C. The Court Should Issue an Order Conditionally Certifying the Settlement Class**

17 **1. *The Criteria for Conditional Certification of a Settlement Class Are Met***

18 California Code of Civil Procedure § 382 provides that three basic requirements must be met in
19 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
20 community of interest in the question of law or fact affecting the parties to be represented; and (3)
21 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is
22 superior to other methods. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *see also*, *Sav-*
23 *On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326; *Dunk v. Ford Motor Co.* (1996) 48
24 Cal.App.4th 1794, 1806; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704.) Any doubts as to the
25 appropriateness of class treatment must be resolved in favor of certification, subject to later modification.
26 (*Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475.) For purposes of this Settlement only,
27 Defendant has stipulated to conditional certification of the proposed class action. (*Settlement*, section 2.)
28

1 **2. *There Is an Ascertainable Class***

2 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
3 the class, and (3) the means of identifying the class members. (*See Miller v. Woods* (1983) 148 Cal.App.3d
4 862, 873.) In this case, Plaintiff contends that all three considerations strongly favor class certification.

5 **a. *The Settlement Class Is Precisely Defined***

6 The proposed class consists of “all current and former non-exempt California employees who
7 worked for Defendant at any time from August 12, 2017 until the date of preliminary approval.” The Class
8 is estimated to consist of 15 persons with an estimated 2,288 workweeks, and includes 11 PAGA
9 Aggrieved Employees. (*Settlement*, section 1.3.) The class definition is sufficiently specific to enable the
10 parties, potential class members, and the Court to readily determine the parameters of the class. (*See*
11 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617 (proposed class defined as all persons
12 nationwide subscribing to telephone service since January 1, 1981, who were charged for one or more
13 unanswered long distance calls, deemed “plainly” ascertainable).) Indeed, the Class Members are readily
14 ascertainable from Defendant’s records. (*Savoy Decl.*, at ¶ 34.)

15 **b. *Class Members Are Numerous Enough that Individual Litigation Is Not***
16 ***Preferable***

17 Class size leans in favor of class certification in this case. There are approximately a maximum of
18 Fifteen (15) Class Members. (*Savoy Decl.*, ¶ 6.) It would be impractical to bring each of these persons
19 before the Court or to resolve their claims individually. There is no magic number that satisfies the
20 numerosity requirement. (*See, e.g., Rose v. City of Haywood* (1981) 126 Cal.App.3d 926, 934 (holding that
21 forty-two class members are quantitatively sufficient to satisfy the numerosity requirement).) Here,
22 Plaintiff asserts that the class of Fifteen (15) Class Members and allegedly aggrieved employees is
23 sufficient to satisfy the numerosity requirement.

24 **c. *Members of the Class Are Easily Identifiable***

25 The question of whether class members are easily identifiable turns on whether a plaintiff can
26 establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual
27 members of such class as prerequisite to the class suit.” (*Daar*, 67 Cal.2d at 706; *see also, Reyes v. San*
28

1 *Diego County Bd. of Supervisors* (1987)196 Cal.App.3d 1263, 1275.) Here, the existence of an
2 ascertainable class can be established through Defendant’s records. (*Savoy Decl.*, ¶ 34.)

3 **3. The Proposed Class Shares a Well-Defined Community of Interest**

4 The community of interest requirement embodies three factors: (1) predominant questions of law
5 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
6 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806; *Richmond*, 29 Cal.3d at 473-75.)
7 In this case, Plaintiff’s claims satisfy all three factors.

8 **a. Common Issues of Law and Fact Predominate Over Individual Issues**

9 The commonality criterion requires the existence of common questions of law or fact and is
10 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d at 695; *In re*
11 *United Energy Corp. Solar Power Modules Tax Shelter Investment Securities Lit.* (C.D. Cal. 1988) 122
12 F.R.D. 251, 254.) All that is required is that a common question of fact or law exists which predominates
13 over issues unique to the plaintiff. The existence of individual issues or facts is not a bar to class
14 certification as long as they do not render class litigation unmanageable or predominate over the common
15 issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1354 (“presence
16 of individual damages issues cannot bar certification”).)

17 In the Action, Plaintiff’s claims present sufficient common issues of law and fact that predominate
18 over individual issues and warrant class certification. Plaintiff alleges that Defendant failed to provide
19 timely, uninterrupted meal and rest periods to all Class Members as a regular practice. Plaintiff alleges that
20 Defendant failed to properly compensate Class Members for all hours worked, including overtime hours
21 worked. Plaintiff further asserts that Defendant failed to adequately compensate its former employees for
22 all wages owed at the time of their separation from employment. Plaintiff alleges that Defendant’s policies
23 and practices were uniform as to all Class Members, and that all class members were indeed subjected to
24 the same workplace experiences as him. Thus, class treatment is appropriate.

25 **b. Plaintiff’s Claims Are Typical of the Claims of the Settlement Class**

26 To satisfy the typicality requirement, California law does not require that a plaintiff have claims
27 identical to the other class members. Rather, the test of typicality for a class representative is whether other
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1 members have the same or similar injury, whether the action is based on conduct which is not unique to the
2 named plaintiff, and whether other class members have been injured by the same course of conduct.
3 (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) The typicality requirement for a class
4 representative refers to the nature of the claim or defense of the representative, and not to the specific facts
5 from which it arose or the relief sought. (*Id.*)

6 Here, Plaintiff alleges that his claims are similar to those of the other Class Members. All of
7 Plaintiff's claims arise out of the same alleged facts and course of conduct giving rise to the claims of the
8 other Class Members, as they all worked together for Defendant and were subjected to identical workplace
9 policies and practices. Finally, Plaintiff's claims are typical of the other class members because they seek
10 the exact same relief for alleged Labor Code violations. Because Plaintiff's claims are based upon the
11 same alleged conduct and business practices as those of the potential Class Members, the typicality
12 requirement has been satisfied.

13 **c. *Plaintiff and Counsel Will Fairly and Adequately Represent the Class***

14 The question of adequacy of representation "depends on whether the plaintiff's attorney is qualified
15 to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class."
16 *McGee v. Bank of America* (1976) 60 Cal.App.3d 422, 450. Here, these considerations are satisfied. Class
17 Counsel includes well-regarded and accomplished trial lawyers who are qualified and experienced in
18 employment-related, class action litigation. (*Savoy Decl.*, at ¶ 43-50.) Further, because Plaintiff's claims
19 are typical of other Class Members and are not based on unique circumstances that might jeopardize the
20 claims of the Class, there is no antagonism between the interest of the representative Plaintiff and those of
21 the Class.

22 Additionally, Plaintiff Garcia understands the obligations of being an adequate class
23 representative, the details of what he has done to demonstrate the adequacy of his representation, and the
24 substantial burden he will and has undertaken in order to represent the putative class. (See *Declaration*
25 *of Plaintiff Michael Garcia Juarez* ("Garcia Decl."), filed concurrently herewith.)

26 **4. *Proceeding As a Class Action Is Superior to Individual Action***

27 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
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1 as the Class Members and the Court will derive substantial benefits. Class certification would serve as the
2 only means to deter and redress the alleged Labor Code violations. (*See Linder v. Thrifty Oil Co.* (2000) 23
3 Cal.4th 429, 434 (relevant considerations include the probability that each class member will come forward
4 ultimately to prove his or her separate claim to a portion of the total recovery and whether the class
5 approach would actually serve to deter and redress the alleged wrongdoing).)

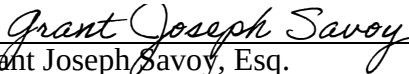
6 Furthermore, individual actions arising out of the same operative facts would unduly burden the
7 courts and could result in inconsistent results, which may be avoided by class certification.

8 **V. CONCLUSION**

9 For the reasons set forth above, Plaintiff respectfully requests that the Court: (1) certify a
10 provisional settlement class; (2) grant preliminary approval of the proposed Settlement; (3) approve the
11 Class Notice; (4) appoint Solouki | Savoy, LLP as Class Counsel; (5) appoint Plaintiff Michael Garcia as
12 the Class Representative; (6) approve Phoenix Class Action Administrators as the Settlement
13 Administrator; and (7) schedule a hearing on final approval of the Settlement.

14
15 Dated: September 22, 2022

SOLOUKI | SAVOY, LLP

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