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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 JEFFREY PIPICH, EVE STORM, GARY
13 CULL, MELISSA KOLAKOWSKI, and
14 DANIEL LOPEZ, on behalf of themselves
15 and all others similarly situated, and as
16 “aggrieved employees” on behalf of other
17 “aggrieved employees” under the Labor
Code Private Attorneys General Act of
2004,

18 *Plaintiffs,*

19 vs.
20

21 O'REILLY AUTO ENTERPRISES, LLC,
22 a Delaware limited liability company;
23 Express Services, Inc., a Colorado
24 corporation dba Express Employment
Professionals; and DOES 2–50, inclusive,

25 *Defendants.*
26

Case No. 3:21-cv-01120-AHG

**PLAINTIFFS’ MEMORANDUM
OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Action filed: June 16, 2021
Hearing 2125, The
Court: Honorable Allison
H. Goddard



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

4 **I. INTRODUCTION**

5 Plaintiffs Jeffrey Pipich (“Pipich”), Eve Storm (“Storm”), Gary Cull
6 (“Cull”), Melissa Kolakowski (“Kolakowski”), and Daniel Lopez (“Lopez”)
7 (collectively “Plaintiffs”) submit this memorandum of points and authorities in
8 support of their unopposed motion for preliminary approval of the Class Action and
9 PAGA Settlement Agreement and Class Notice (the “Settlement”)², which provides
10 for a Gross Settlement Amount (“GSA”) of \$4,100,000.00 in compromise of all
11 disputed claims on behalf of all individuals employed by one or both Defendants as
12 non-exempt, hourly employees, either directly or indirectly through staffing
13 agencies, and who worked at one of Defendant O’Reilly Auto Enterprises, LLC’s
14 distribution centers in California at any time during the Class Period of July 5, 2018
15 to May 22, 2024. Through this Motion, Plaintiffs respectfully request for this Court
16 to (1) provisionally certify the below-defined Class for settlement purposes only
17 under Federal Rules of Civil Procedure § 23 (“Rule 23”); (2) preliminarily approve
18 the Settlement; (3) preliminarily appoint Plaintiffs as Class Representatives; (4)
19 appoint David G. Spivak of The Spivak Law Firm, Alexandra K. Piazza of Berger
20 Montague PC, and Walter L. Haines of United Employees Law Group as Class
21 Counsel; (5) approve the proposed notice procedures and related forms; and (6)
22 schedule a final approval hearing.

23 This Court should grant Plaintiffs’ motion because: (1) for settlement
24 purposes, the Class meets the requirements for class certification under Rule 23; (2)
25 the Settlement warrants preliminary approval based on all indicia for fairness,

26
27
28 ² 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 reasonableness, and adequacy; (3) for settlement purposes, each Plaintiff is
2 adequate to serve as a Class Representative; (4) Plaintiffs' attorneys are adequate
3 to serve as Class Counsel; (5) the proposed notice procedures fully comport with
4 due process and adequately apprise Class Members of their rights; and (6) a final
5 approval hearing must be scheduled to allow Settlement Class Members an
6 opportunity to be heard regarding the Settlement and to give it finality. Accordingly,
7 for the reasons detailed below, this Court should grant Plaintiffs' Motion in its
8 entirety and preliminarily approve the Settlement.

9 **II. BACKGROUND**

10 O'Reilly is an auto parts distributor and Express is a temporary employment
11 agency. DS ¶ 10. Defendant O'Reilly employed Pipich in California as a driver and
12 warehouse worker from about July 1, 2015 until February 1, 2021. *Id.* Defendants
13 employed Storm in California as a warehouse worker from about November 30,
14 2020 until January 7, 2021. *Id.* Defendant O'Reilly employed Cull in California as
15 a warehouse worker from about December 4, 2018 until September 29, 2019. *Id.*
16 Defendant O'Reilly employed Kolakowski in California as a warehouse worker
17 from about October 29, 2019 until January 27, 2022. *Id.* Defendant O'Reilly
18 employed Lopez in California as a warehouse worker from about June of 2017 until
19 October 2, 2023. *Id.*

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

21 On May 11, 2021, Pipich electronically submitted written notice to the
22 LWDA of O'Reilly's violations of Labor Code §§ 510, 512, 558, 1174, 1182.11,
23 1194, and 1197. DS ¶ 11; Settlement ¶ 2.1.

24 On June 16, 2021, Pipich filed his FLSA collective action Complaint in the
25 United States District Court for the Southern District of California. It was assigned
26 to the Honorable Judge M. James Lorenz. Pipich's FLSA claims in the First
27 Amended Complaint were dismissed on March 14, 2022. DS ¶ 12; Settlement ¶ 2.2.
28



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1 On July 22, 2021, Pipich filed his First Amended Complaint asserting, among
2 other things, PAGA claims on behalf of himself and similarly aggrieved employees
3 for Defendant O'Reilly's Labor Code violations for unpaid wages for time spent in
4 Covid-19 and security screenings, meal and rest break violations, failure to
5 reimburse for business expenses, inaccurate wage statements, untimely wages, and
6 related violations. DS ¶ 13; Settlement ¶ 2.3.

7 By letter dated August 11, 2021, Storm gave written notice by certified mail
8 to the LWDA of violations of the California Labor Code. Storm filed her PAGA
9 representative action in the Riverside County Superior Court on October 15, 2021,
10 case no. CVRI2202748. The bases for Storm's private attorney general action are
11 Defendants' failure to pay all wages earned at the correct rates, including for time
12 spent in security checks, failure to provide meal breaks, failure to authorize and
13 permit rest breaks, failure to reimburse for expenses, failure to provide accurate and
14 complete itemized wage statements, untimely wages during and at the conclusion
15 of employment, failure to provide toilet and storage facilities, lockers, and
16 acceptable work temperatures, and failure to maintain accurate employment
17 records. Settlement ¶ 2.4. That action remains pending. DS ¶ 14.

18 On January 4, 2022, Pipich submitted an Amended PAGA Notice to the
19 LWDA for violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 510,
20 512, 1174, 1194, 1197, 1198, and 2802 and Wage Order 9. DS ¶ 15; Settlement ¶
21 2.5.

22 On April 7, 2022, Pipich filed a Second Amended Complaint asserting only
23 representative PAGA claims to recover civil penalties for violations of the Labor
24 Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194,
25 1197, 1198, 2350, and 2802. DS ¶ 16; Settlement ¶ 2.6.

26 On November 22, 2021, Storm filed an Amendment to Complaint to add
27 O'Reilly in place of Doe Defendant 1. DS ¶ 17; Settlement ¶ 2.7.
28



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1 On January 5, 2022, Storm sent a supplemental written notice by certified
2 mail to the LWDA. On January 27, 2022, the Parties agreed to stay the Storm PAGA
3 case pending the resolution of the first filed Pipich PAGA case. DS ¶ 18; Settlement
4 ¶ 2.8.

5 On June 15, 2022, Pipich and O'Reilly participated in an early neutral
6 evaluation conference in the United States District Court for the Southern District
7 of California. The Parties engaged in settlement negotiations at that time. The
8 disputes between the Parties did not resolve at that time. DS ¶ 19; Settlement ¶ 2.9.

9 On July 5, 2022, Storm filed a class action lawsuit against Defendants, *Eve*
10 *Storm v. Express Services, Inc. dba Express Employment Professionals, at al.*,
11 Superior Court for the State of California, County of Riverside, Case No.
12 CVR12202748. Storm's Class Action Complaint presented the following causes of
13 action: Failure to pay all wages earned at the correct rates; Failure to provide meal
14 periods; Failure to authorize and permit rest breaks; Failure to reimburse for
15 expenses; Waiting time penalties; and Unfair competition. DS ¶ 20; Settlement ¶
16 2.10.

17 On August 26, 2022, Defendant O'Reilly removed Storm's class action
18 lawsuit to the United States District Court for the Central District of California, case
19 no. 5:22-cv-01510 FLA (MARx). The parties in the Storm Action entered into a
20 tolling agreement and dismissed the class action pending the results of a mediation.
21 DS ¶ 21; Settlement ¶ 2.11.

22 On February 14, 2023, Pipich and Storm participated in mediation with
23 Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties
24 did not resolve at that time. DS ¶ 22; Settlement ¶ 2.12.

25 On April 5, 2023, Storm filed another class action lawsuit against
26 Defendants, titled *Eve Storm v. Express Services, Inc. dba Express Employment*
27 *Professionals, at al.*, United States District Court, Central District of California,
28



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Case No. 5:23-CV-00597-FLA-MAR. Storm’s Class Action Complaint presented the following causes of action: Failure to pay all wages earned at the correct rates; Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure to reimburse for expenses; Waiting time penalties; and Unfair competition. Defendants subsequently filed a motion to compel arbitration of this case. DS ¶ 23; Settlement ¶ 2.13.

On April 14, 2023, Pipich filed a Third Amended Complaint for Defendant O’Reilly’s alleged failure to: (1) Provide all rest and meal periods; (2) Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all hours worked at the correct rates of pay; (4) Issue accurate and complete itemized wage statements; (5) Timely pay wages during and upon termination of employment and; (6) Provide toilet and storage facilities, lockers, change rooms, and acceptable work temperatures, and (7) Maintain accurate employment records. DS ¶ 24; Settlement ¶ 2.14.

On June 12, 2023, Cull filed a class action complaint in the Superior Court of the State of California, County of Riverside, case no. CVRI2303008. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hour Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; and (5) Unfair Competition. On August 14, 2023, Defendant O’Reilly removed the Cull lawsuit to the United States District Court for the Central District of California, case no. 5:23-cv-01623-FLA-MAR. DS ¶ 25; Settlement ¶ 2.15.

On December 26, 2023, Cull filed a First Amended Class Action Complaint adding Kolakowski and Lopez as named plaintiffs. It contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Waiting Time Penalties; and (5) Unfair Competition. DS



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¶ 26; Settlement ¶ 2.16.

On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences before Honorable Magistrate Judge Jill L. Burkhardt which led to this Agreement to settle the Action. DS ¶ 27; Settlement ¶ 2.17.

On May 2, 2024, the United States District Court for the Central District of California dismissed the Storm and Cull matters without prejudice. DS decl., ¶ 28, **Exhibit 2**.

On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave additional written notice to Defendants and the LWDA of Defendants' violations of the Labor Code. Settlement ¶ 2.18; DS ¶ 29, **Exhibit 3**.

On May 21, 2024, Pipich filed a Fourth Amended Complaint that added Storm, Cull, Kolakowski, and Lopez as additional Plaintiffs and Express Services, Inc. in place of Doe Defendant 1. It contains the claims made in the prior actions of the Plaintiffs recounted above and additional factual allegations investigated and discovered by the Plaintiffs which were part of the settlement negotiations at the mediation and mandatory settlement conferences. The Fourth Amended Complaint is the "Operative Complaint." Settlement ¶ 2.19; DS ¶ 30, **Exhibit 4**. The Fourth Amended Complaint contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Wage Statement Penalties; (6) Waiting Time Penalties; (7) Unfair Competition; and Civil Penalties (Lab.Code §§ 2698, *et seq.*). *Id.*

B. Sampling

On September 12, 2022, Plaintiffs requested that Defendants informally disclose documents and data to enable Plaintiffs to prepare for settlement discussions, including the number of putative class members and aggrieved employees, the number of paychecks and workweeks for the various limitations



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1 periods applicable to Plaintiffs' claims. DS ¶ 31. Plaintiffs also requested a
2 reasonable, randomly selected sample of Defendants' time, payroll, and expense
3 records, and related personnel records. *Id.* Finally, Plaintiffs requested Defendants'
4 written policies applicable to the claims at hand and asked that Defendants identify
5 any and all similar claims against them.

6 The Parties thereafter engaged in an informal, voluntary exchange of
7 information in the context of privileged settlement discussions to facilitate an early
8 mediation. Defendants produced Plaintiffs' entire personnel files (including
9 policies and agreements they signed and acknowledged) and copies of their relevant
10 company written policies. DS ¶ 32.

11 The Defendants disclosed that there have been similar claims against them.
12 Defendants disclosed and/or Plaintiffs discovered the following similar claims for
13 unpaid minimum wages, overtime wages, meal, rest period violations, off-the-clock
14 COVID-19 and security screenings:

15 (A) *Stephanie Perez v. O'Reilly Auto Enterprises, LLC*, Superior Court of
16 the State of California for County of San Joaquin, case no. STK-CV-UOE-2023-
17 7289, filed on July 14, 2023, and amended on September 23, 2023. This is a class
18 and PAGA action for (1) Failure To Provide Duty-Free Meal Periods; (2) Failure
19 To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum Wages; (4)
20 Failure To Pay Overtime Wages; (5) Unfair, Competition; (6) Failure To Provide
21 Accurate Wage Statements; (7) Failure To Pay All Wages Owed Upon
22 Termination; and (8) Civil Penalties Under PAGA.; and

23 (B) *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of
24 the State of California for County of San Joaquin, case no. STK-CV-UOE-2024-
25 354, filed on January 11, 2024. This is a class and PAGA action for (1) Failure To
26 Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal Period
27 Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate Itemized
28



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1 Employee Wage Statements; (6) Violation Of Labor Code Section 1174; (7)
2 Violation Of Labor Code Sections 2102 And 2103; (8) Failure To Pay Wages
3 Timely And Upon Separation Of Employment; And (9) Violation Of Unfair
4 Competition Law. DS ¶ 36. These matters settled on an individual basis. *Id.*

5 Before the mediation, Defendant O'Reilly represented that it had directly
6 employed 2,889 putative class members directly during the period of May 11, 2020
7 to November 15, 2022 and approximately 3,587 putative class members during the
8 period of July 5, 2018 to November 15, 2022. Plaintiffs estimated approximately a
9 total of 4,656 putative class members during the period of May 11, 2020 to
10 November 15, 2022 and 5,854 putative class members during the period of July 5,
11 2018 to November 15, 2022 who were employed both directly and indirectly
12 through staffing agencies. There were records for 169 employees with both time
13 and payroll records in the random sample Defendants and Plaintiffs chose. DS ¶ 33.
14 Plaintiff's data analyst, James Toney, evaluated these sample records to determine
15 shift, workday, and workweek lengths, meal period timing, paychecks issued,
16 overtime hours, and hourly rates of pay (among other things). Subsequently,
17 Plaintiffs gathered the personnel files of dozens of employees from Defendants and
18 Defendants produced additional data up and through the final settlement
19 conferences with Magistrate Judge Burkhardt that included the class size (both
20 direct hires and temp workers), the aggrieved employees under PAGA, the number
21 of pay checks, the number of workweeks, and additional data points through
22 November of 2023. *Id.*

23
24 Plaintiffs retained James Toney, a data analyst, to analyze the sample.
25 Plaintiffs also employed the Raosoft³ Sample Size calculator

26
27 ³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the
28 Internet, InterForm, SurveyWin, EZReport and Rapid Report innovative survey
software programs for information gathering and analysis. The family of survey



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(<http://www.raosoft.com/samplesize.html>) to determine if the sample size selected is statistically reliable. *Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of 95%, and a population size of 5,750, the Raosoft Sample Size Calculator recommended a sample of 10. DS ¶ 34, **Exhibit 5**. Thus, the sample population that Plaintiffs' data analyst evaluated is statistically reliable. *Id.*

C. Mediation and Settlement Conferences

Following much of the foregoing informal discovery and exchange of information, the Parties engaged in settlement discussions. On June 15, 2022, Pipich and O'Reilly participated in an early neutral evaluation conference in the United States District Court for the Southern District of California, the Honorable Magistrate Judge Jill L. Burkhardt presiding. The Parties engaged in settlement negotiations at that time. The disputes between the Parties did not resolve at that time. Settlement ¶ 2.9. On February 14, 2023, Pipich and Storm participated in mediation with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the Parties did not resolve at that time. *Settlement* ¶ 2.12. On February 5 and 21, 2024, the Parties participated in mandatory settlement conferences before Honorable Magistrate Judge Jill L. Burkhardt which led to this Agreement to settle the Action. Settlement ¶ 2.17. During these settlement proceedings, the Parties participated in multiple days of productive negotiations and ultimately reached

software supports data collection and reporting for any form-based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or pen-based: all types of distribution.” The Raosoft webpage advertises that is it “database web survey software for gathering information.” <http://www.raosoft.com/>. It also advertises, “The parameters of the sample size calculation are something that you choose.” <http://www.raosoft.com/suggestreading.html>.



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1 agreement on a class-wide settlement. During the proceedings, each side,
2 represented by his / her / its respective counsel, recognized the risk of an adverse
3 result in the Action and agreed to settle the Action and all other matters covered by
4 this Agreement pursuant to the terms and conditions of this Agreement. DS ¶ 35.

5 **III. OVERVIEW OF THE SETTLEMENT**

6 **A. Settlement Class and Aggrieved Employees Definition**

7 The Settlement defines the Settlement Class as all individuals employed by
8 one or both Defendants as non-exempt, hourly employees, either directly or
9 indirectly through staffing agencies, and who worked at one of Defendant O'Reilly
10 Auto Enterprises, LLC's distribution centers in California at any time during the
11 Class Period. Settlement ¶ 1.5. The Class Period is July 05, 2018 to May 22, 2024.
12 Settlement ¶ 1.12. The "Aggrieved Employees" are all class members who were
13 employed by one or both Defendants in California and classified as non-exempt,
14 hourly employees, either directly or indirectly through staffing agencies, at one of
15 Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at
16 any time during the PAGA Period. Settlement ¶ 1.4. The "PAGA Period" means
17 the period from May 11, 2020 to May 22, 2024. Settlement ¶ 1.30.

18 **B. Monetary Terms**

19 Gross Settlement Amount. Defendant O'Reilly promises to pay
20 \$4,100,000.00 and no more as the Gross Settlement Amount and to separately pay
21 any and all employer payroll taxes owed on the Wage Portions of the Individual
22 Class Payments. Defendant O'Reilly has no obligation to pay the Gross Settlement
23 Amount (or any payroll taxes) prior to the deadline stated in Paragraphs 6.1 and 6.2
24 of this Agreement. The Administrator will disburse the entire Gross Settlement
25 Amount without asking or requiring Participating Class Members or Aggrieved
26 Employees to submit any claim as a condition of payment. None of the Gross
27 Settlement Amount will revert to Defendants. Settlement ¶ 3.1.

28 Subject to Court approval, the Administrator will make and deduct the



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1 following payments from the Gross Settlement Amount, in the amounts specified
2 by the Court in the Final Approval:

3 To Plaintiff: Class Representative Service Payments to the Class
4 Representatives of not more than \$55,000.00 (in addition to any Individual Class
5 Payment and any Individual PAGA Payment each Class Representative is entitled
6 to receive as a Participating Class Member). This total will be divided as follows:
7 (1) \$22,500.00 to Jeffrey Pipich; (2) \$10,000.00 to Eve Storm; (3) \$7,500 to Gary
8 Cull; (4) \$7,500 to Melissa Kolakowski; and (5) \$7,500 to Daniel Lopez. As part of
9 the motion for Class Counsel Fees Payment and Class Litigation Expenses
10 Payment, Plaintiffs will seek Court approval for any Class Representative Service
11 Payments no later than fourteen (14) calendar days prior to the Response Deadline.
12 If the Court approves Class Representative Service Payments less than the amount
13 requested, the Administrator will retain the remainder in the Net Settlement
14 Amount. Plaintiffs and the Class Representatives shall not have the right to revoke
15 or cancel this Agreement if the Court does not approve any or all of the requested
16 Class Representative Service Payments. The Administrator will pay the Class
17 Representative Service Payments using IRS Form 1099. The Class Representatives
18 agree to provide the Administrator with an updated IRS Form W-9 before the Class
19 Representative Service Payments are issued to the extent required by the Settlement
20 Administrator. Plaintiffs assume full responsibility and liability for employee taxes
21 owed on the Class Representative Service Payments and shall hold Defendants
22 harmless from any claim or liability for taxes, penalties, or interest arising as a result
23 of the Class Representative Service Payments. Settlement ¶ 3.2.1

24 To Class Counsel: A Class Counsel Fees Payment of not more than one-third
25 of the Gross Settlement Amount (i.e., 33 and 1/3%) which is estimated to be
26 \$1,366,666.67, and a Class Counsel Litigation Expenses Payment of not more than
27 \$120,000.00. Plaintiffs and/or Class Counsel will file a motion for Class Counsel
28



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1 Fees Payment and Class Litigation Expenses Payment no later than fourteen (14)
2 calendar days prior to the Response Deadline, which shall be decided as part of the
3 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
4 a Class Counsel Litigation Expenses Payment less than the amounts requested, the
5 Administrator will allocate the remainder to the Net Settlement Amount. This
6 Agreement is not contingent upon the Court's decision to award Class Counsel any
7 particular amount, or any amount, for Class Counsel Fees Payment or Class
8 Litigation Expenses Payment. Released Parties shall have no liability to Class
9 Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any
10 Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment.
11 Class Counsel shall be solely responsible for the division and distribution of any
12 and all Court-approved Class Counsel Fees Payment and Class Litigation Expenses
13 Payment. Class Counsel agrees to release Defendants and the Released Parties from
14 any responsibility for and liability arising out of or related to the division and
15 distribution of any Court-approved Class Counsel Fees Payment and Class
16 Litigation Expenses Payment. Class Counsel agrees to assume all responsibility for
17 the payment of any liens asserted by any former attorneys in its firm and agrees to
18 indemnify and hold harmless Defendants for any such lien. The Administrator will
19 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using
20 one or more IRS 1099 Forms. Class Counsel agrees to provide the Administrator
21 with an executed IRS Form W-9 before the Class Counsel Fees Payment and Class
22 Litigation Expenses Payment are issued to the extent required by the Administrator.
23 Class Counsel assumes full responsibility and liability for taxes owed on the Class
24 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and
25 holds Defendants harmless, and indemnifies Defendants, from any claim or liability
26 for taxes, penalties, or interest arising as a result of the Class Counsel Fees Payment
27 or the Class Litigation Expenses Payment. Settlement ¶ 3.2.2.
28

1 To the Administrator: An Administration Expenses Payment not to exceed
2 Forty Thousand Dollars and Zero Cents (\$40,000.00) except for a showing of good
3 cause and as approved by the Court. To the extent the Administration Expenses are
4 less or the Court approves payment less than \$40,000.00, the Administrator will
5 retain the remainder in the Net Settlement Amount. Settlement ¶ 3.2.3.

6 To Each Participating Class Member: An Individual Class Payment
7 calculated by (a) dividing the Net Settlement Amount by the total number of
8 Workweeks worked by all Participating Class Members during the Class Period and
9 (b) multiplying the result by each Participating Class Member's Workweeks.
10 Settlement ¶ 3.2.4.

11 **C. Timing of Payments**

12 Defendant O'Reilly shall fully fund the Gross Settlement Amount, and also
13 fund the amounts necessary to fully pay Defendants' share of payroll taxes by
14 transmitting the funds to the Administrator no later than fourteen (14) calendar days
15 after the Effective Date. Settlement ¶¶ 4.3-4.4.

16 Within fourteen (14) calendar days after Defendant O'Reilly funds the Gross
17 Settlement Amount, the Administrator will mail checks for all Individual Class
18 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
19 Administration Expenses Payment, the Class Counsel Fees Payment, the Class
20 Counsel Litigation Expenses Payment, and the Class Representative Service
21 Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel
22 Litigation Expenses Payment and the Class Representative Service Payment shall
23 not precede disbursement of Individual Class Payments and Individual PAGA
24 Payments. *Id.*

25 **D. Calculation of Settlement Shares**

26 "Individual Class Payment" means the Participating Class Member's pro rata
27 share of the Net Settlement Amount calculated according to the number of
28



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1 Workweeks worked during the Class Period. Settlement ¶ 1.22. An Individual Class
2 Payment will be calculated by (a) dividing the Net Settlement Amount by the total
3 number of Workweeks worked by all Participating Class Members during the Class
4 Period and (b) multiplying the result by each Participating Class Member's
5 Workweeks. Settlement ¶ 3.2.4.

6 "Individual PAGA Payment" means the Aggrieved Employee's pro rata
7 share of 25% of the PAGA Penalties calculated according to the number of PAGA
8 Workweeks worked during the PAGA Period. Settlement ¶ 1.23. The Administrator
9 will calculate each Individual PAGA Payment by (a) dividing the amount of the
10 Aggrieved Employees' 25% share of PAGA Penalties \$102,500.00 by the total
11 number of PAGA Workweeks worked by all Aggrieved Employees during the
12 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
13 Workweeks. Aggrieved Employees assume full responsibility and liability for any
14 taxes owed on their Individual PAGA Payment. Settlement ¶ 3.2.5.1.

15 **E. Apportionment of Settlement Shares**

16 10.00% of each Participating Class Member's Individual Class Payment will
17 be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions
18 are subject to tax withholding and will be reported on an IRS W-2 Form. The
19 90.00% of each Participating Class Member's Individual Class Payment will be
20 allocated to settlement of claims for interest and penalties (the "Non-Wage
21 Portion"). The Non-Wage Portions are not subject to wage withholdings and will
22 be reported on IRS 1099 Forms. Participating Class Members assume full
23 responsibility and liability for any employee taxes owed on their Individual Class
24 Payment. Settlement ¶ 3.2.4.1. The Administrator will report the Individual PAGA
25 Payments on IRS 1099 Forms. Settlement ¶ 3.2.5.2.

26 **F. The Releases**

27 Effective on the date when Defendant O'Reilly fully funds the entire Gross
28



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1 Settlement Amount and funds all employer payroll taxes owed on the Wage Portion
2 of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel
3 will release claims against all Released Parties as follows:

4 Plaintiffs' Releases: Plaintiffs and their respective former and present
5 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
6 assigns generally, release and discharge Released Parties from all claims,
7 transactions, or occurrences of every kind and nature, actual or potential, known
8 and unknown, which exist or could arise out of their employment and/or the end of
9 their employment with Defendants, through and including the date of execution of
10 this Agreement, including, but not limited to: (a) all claims that were, or reasonably
11 could have been, alleged, based on the facts contained, in the Operative Complaint
12 and (b) all PAGA claims that were, or reasonably could have been, alleged based
13 on facts contained in the Operative Complaint, Plaintiffs' PAGA Notices, or
14 ascertained during the Action and released under paragraph 6.2 of the Settlement
15 Agreement ("Plaintiffs' Releases"). Plaintiffs' Releases do not extend to any claims
16 or actions to enforce this Agreement, or to any claims for vested benefits,
17 unemployment benefits, disability benefits, social security benefits, workers'
18 compensation benefits that arose at any time, or based on occurrences outside the
19 Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law
20 different from, or in addition to, the facts or law that Plaintiffs now know or believe
21 to be true but agrees, nonetheless, that Plaintiffs' Releases shall be and remain
22 effective in all respects, notwithstanding such different or additional facts or
23 Plaintiffs' discovery of them. Settlement ¶ 6.1.

24
25 Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
26 purposes of Plaintiffs' Releases, Plaintiffs expressly waive and relinquish the
27 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
28 which reads:



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

5
6 Settlement ¶ 6.1.1.

7 Release by Participating Class Members: All Participating Class Members,
8 on behalf of themselves and their respective former and present representatives,
9 agents, attorneys, heirs, administrators, successors, and assigns, release Released
10 Parties from all claims stated in the Operative Complaint and those based solely
11 upon the facts alleged in the Operative Complaint. Upon entry of Judgment and
12 funding of the Gross Settlement Amount, the Defendants and their parents,
13 subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and
14 agents shall be entitled to a release from the Settlement Class members of all class
15 claims, actions, demands, causes of action, suits, debts, obligations, damages,
16 penalties, rights or liabilities, of any nature and description whatsoever, that are
17 either asserted in the Action, or could have been asserted in the Action based on the
18 facts, claims, and theories plead in the Operative Complaint on file at the time of
19 final approval, including but not limited to, Labor Code sections 90.5(a), 201, 201.3,
20 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174,
21 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103,
22 2350, 2802, and 6404, and the applicable IWC Wage Orders which occurred during
23 the Class Period. (“Released Class Claims”) Except as set forth in Section 6.3 of
24 this Agreement, Participating Class Members do not release any other claims,
25 including claims for vested benefits, wrongful termination, violation of the Fair
26 Employment and Housing Act, unemployment insurance, disability, social security,
27 workers’ compensation, or claims based on facts occurring outside the Class Period.
28



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1 Released Class Claims also includes all claims that were or that could have been
2 alleged in the Action based on the facts stated in the Operative Complaint, including
3 but not limited to any claims for violations of the California Labor Code, and the
4 relevant Wage Orders. The term “Released Class Claims” also includes Plaintiffs’
5 claim that Defendants are liable for the attorneys’ fees incurred to prosecute this
6 Action on behalf of Class Members, including fees incurred for the services of Class
7 Counsel, and any claim that Defendants are liable for any other remedies, civil
8 penalties, statutory penalties, or interest under California law based on the facts
9 alleged in the Operative Complaint. The term “Released Class Claims” also
10 includes all claims that the Class Members may have against the Released Parties
11 relating to (i) the payment, taxation and allocation of attorneys’ fees and costs to
12 Class Counsel pursuant to this Agreement, and (ii) the payment, taxation, and
13 allocation of the Class Representative Service Payments pursuant to this Settlement
14 Agreement. Class Members may discover facts in addition to or different from those
15 they now know or believe to be true with respect to the subject matter of the
16 Released Class Claims, but upon the Effective Date, shall be deemed to have, and
17 by operation of the Final Approval Order shall have, fully, finally, and forever
18 settled and released any and all of the Released Claims, whether known or
19 unknown, suspected or unsuspected, contingent or non-contingent, which now exist
20 or have existed, upon any theory of law or equity now existing. It is the intent of
21 the Parties that the Final Approval Order and Judgement entered by the Court shall
22 have full res judicata and collateral estoppel effect and be final and binding upon
23 Class Members regarding the Released Class Claims. Settlement ¶ 6.2.

24
25 Release of PAGA Claims: Upon entry of Judgment and funding of the Gross
26 Settlement Amount, Plaintiffs, on behalf of themselves and the State of California,
27 and the Aggrieved Employees fully release and discharge Defendants and their
28 parents, subsidiaries, affiliated entities, franchisors, franchisees, officers,



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1 employees, and agents, from any and all claims for relief under the PAGA, based
2 on the claims for penalties that could have been sought by the Labor Commissioner
3 or Plaintiffs based on the facts and legal claims as alleged in the Operative
4 Complaint at the time of final approval by Plaintiffs in the Action and Plaintiffs'
5 notice letters to the LWDA including, but not limited to, Labor Code sections
6 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7,
7 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,
8 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and
9 any resulting claim for attorneys' fees and costs under the PAGA, which occurred
10 during the PAGA Period. Plaintiffs do not release the claim for wages or damages
11 of any Aggrieved Employee unless such Aggrieved Employee is a Participating
12 Class Member. Settlement ¶ 6.3.

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

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

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



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1 Not later than three (3) business days after the Administrator's receipt of any
2 Class Notice returned by the USPS as undelivered, the Administrator shall re-mail
3 the Class Notice using any forwarding address provided by the USPS. If the USPS
4 does not provide a forwarding address, the Administrator shall conduct a Class
5 Member Address Search, and re-mail the Class Notice to the most current address
6 obtained. The Administrator has no obligation to make further attempts to locate or
7 send Class Notice to Class Members whose Class Notice is returned by the USPS a
8 second time. Settlement ¶ 8.4.3.

9 The deadlines for Class Members' written Objections, Challenges to
10 Workweeks (disputes), and Requests for Exclusion will be extended an additional
11 fourteen (14) days beyond the sixty (60) days otherwise provided in the Class
12 Notice for all Class Members whose notice is re-mailed. The Administrator will
13 inform the Class Member of the extended deadline with the re-mailed Class Notice.
14 Settlement ¶ 8.4.4.

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

25 **1. Disputes**

26 Each Class Member shall have sixty (60) calendar days after the
27 Administrator mails the Class Notice (plus an additional fourteen (14) calendar days
28



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1 for Class Members whose Class Notice is re-mailed) to challenge the number of
2 Class Workweeks and PAGA Workweeks (if any) allocated to the Class Member
3 in the Class Notice. This is also known as a dispute. The Class Member may
4 challenge the allocation by communicating with the Administrator via fax, email or
5 mail. The Administrator must encourage the challenging Class Member to submit
6 supporting documentation. In the absence of any contrary documentation, the
7 Administrator is entitled to presume that the Workweeks contained in the Class
8 Notice are correct so long as they are consistent with the Class Data. The
9 Administrator's determination of each Class Member's allocation of Workweeks
10 shall be final and not appealable or otherwise susceptible to challenge. The
11 Administrator shall promptly provide copies of all challenges to calculation of
12 Workweeks to Defense Counsel and Class Counsel and the Administrator's
13 determination of the challenges. Settlement ¶ 8.6.

14 2. Opting Out

15 Class Members who wish to exclude themselves (opt-out of) the Class
16 Settlement must send the Administrator, by fax, email, or mail, a signed written
17 Request for Exclusion not later than sixty (60) days after the Administrator mails
18 the Class Notice (plus an additional fourteen (14) days for Class Members whose
19 Class Notice is re-mailed). A Request for Exclusion is a signed letter from a Class
20 Member or his/her representative that reasonably communicates the Class
21 Member's election to be excluded from the Settlement and includes the Class
22 Member's name, address, and email address or telephone number. To be valid, a
23 Request for Exclusion must be timely faxed, emailed, or postmarked by the
24 Response Deadline. The date of the postmark on the return mailing envelope or the
25 date of the sent email shall be the exclusive means used to determine whether a
26 Request for Exclusion has been timely submitted. Settlement ¶ 8.5.

27 The Administrator may not reject a Request for Exclusion as invalid because
28



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1 it fails to contain all the information specified in the Class Notice. The
2 Administrator shall accept any Request for Exclusion as valid if the Administrator
3 can reasonably ascertain the identity of the person as a Class Member and the Class
4 Member's desire to be excluded. The Administrator's determination shall be final
5 and not appealable or otherwise susceptible to challenge. If the Administrator has
6 reason to question the authenticity of a Request for Exclusion, the Administrator
7 may demand additional proof of the Class Member's identity. The Administrator's
8 determination of authenticity shall be final and not appealable or otherwise
9 susceptible to challenge. *Id.*

10 Every Class Member who does not submit a timely and valid Request for
11 Exclusion is deemed to be a Participating Class Member under this Agreement,
12 entitled to all benefits and bound by all terms and conditions of the Settlement,
13 including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3
14 of this Agreement, regardless of whether the Participating Class Member actually
15 receives the Class Notice or objects to the Settlement. *Id.*

16 Every Class Member who submits a valid and timely Request for Exclusion
17 is a Non-Participating Class Member and shall not receive an Individual Class
18 Payment or have the right to object to the class action components of the Settlement.
19 Aggrieved Employees cannot exclude themselves from the PAGA portion of the
20 Settlement and are eligible for an Individual PAGA Payment. *Id.*

21 **3. Objecting**

22 Only Participating Class Members may object to the class action components
23 of the Settlement and/or this Agreement, including contesting the fairness of the
24 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
25 Counsel Litigation Expenses Payment and/or Class Representative Service
26 Payments. Settlement ¶ 8.7.

27 Participating Class Members may send written objections to the
28



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1 Administrator, by fax, email, or mail. A Participating Class Member who elects to
2 send a written objection to the Administrator must do so not later than sixty (60)
3 calendar days after the Administrator's mailing of the Class Notice (plus an
4 additional fourteen (14) days for Class Members whose Class Notice was re-
5 mailed). The postmark on the return mailing envelope or the date of the sent email
6 shall be the exclusive means used to determine whether an Objection has been
7 timely submitted. To be valid, the written objection must state the factual and legal
8 grounds for the objection to the Settlement. The written objection must be signed
9 by the Class Member submitting it, and it must state the person's full name, address,
10 telephone number, and email address (if applicable). A Participating Class Member
11 who has submitted a timely objection may attend the Final Approval Hearing (or
12 personally retain a lawyer to object and attend at the Participating Class Member's
13 own cost). *Id.*

14 Non-Participating Class Members have no right to object to any of the class
15 action components of the Settlement. *Id.*

16 No Solicitation of Exclusions or Objections. The Parties agree to use their
17 best efforts to carry out the terms of this Agreement. At no time shall the Parties or
18 their counsel seek to solicit or otherwise encourage Class Members to submit an
19 Objection or a Request for Exclusion from the Agreement or to appeal from the
20 Court's Final Approval Order. Class Counsel shall not represent Class Members
21 with respect to any objections or appeals to this Agreement. The Parties are not
22 precluded from contacting Class Members in an effort to encourage them to
23 participate in the Settlement. *Id.*

24 **H. Uncashed Checks**

25 For any Class Member whose Individual Class Payment check or Individual
26 PAGA Payment check is uncashed and cancelled after the void date, the
27 Administrator shall transmit the funds represented by such checks to the San Diego
28



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County Bar Foundation, a *cy pres* recipient agreed upon by the Parties and subject to the Court's approval. Settlement ¶ 4.4.3. The recipient, San Diego County Bar Foundation, is a nonprofit organization, foundation, or program of the type described in that subdivision. DS ¶ 37.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE SETTLEMENT CLASS

Purely for the Settlement presently before the Court, Plaintiffs move the Court to find that the Settlement meets the requirements for certifying a class under Federal Rule of Civil Procedure 23 ("Rule 23").⁴

A class action may be certified if all four prerequisites under Rule 23(a) are satisfied and at least one subsection under Rule 23(b) is met. *Doninger v. Pac. Nw. Bell, Inc.*, 564 F.2d 1304 (9th Cir. 1977). The requirements of Rule 23(a) are referred to as: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. *United Steel, Paper & Forestry, Rubber, Mfg. Energy v. Conoco Phillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). As will be discussed below, these requirements are met here. In addition, the Parties agreed to certification of the Class under Rule 23(b)(3) which has the added requirement of "predominance." *Id.* The fundamental question "is not whether . . . plaintiff [has] stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). Defendants do not oppose certification for the purpose of settlement only. As such, the Parties seek provisional certification of the Class. Should the Settlement not be approved or not become final for any reason, the Parties agree no class will be certified, and Defendants' agreement to certify a class conditionally for settlement purposes only



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⁴ Although Defendants dispute Plaintiffs' ability to satisfy Rule 23's certification requirements, Defendants do not oppose class certification for settlement purposes only.

will not be used in connection with any subsequent motion for class certification. As demonstrated below, Plaintiffs contend that, for settlement purposes, this action meets all of the requirements for certification under Rule 23(a) and Rule 23(b)(3).

A. For Purposes of Settlement, The Proposed Class Meets The Requirements of Rule 23(a).

1. Numerosity

Rule 23(a)(1) is typically referred to as “numerosity” in that it requires a class that is “so numerous that joinder of all members is impracticable.” The term “impracticable” does not mean “impossible,” and only refers to “the difficulty or inconvenience of joining all members of the class.” *Advertising Specialty Nat’l Asso. V. Federal Trade Com.*, 238 F.2d 108, 119 (1st Cir. 1956).

O’Reilly estimates that there are approximately 5,750 Class Members. DS ¶ 39. Plaintiffs maintain that it would be impractical and economically inefficient to require each Class Member to separately maintain an individual action or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955). In light of these considerations, the Settlement Class’s membership is sufficiently numerous. DS ¶ 39. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695. Plaintiffs maintain that the Settlement Class is ascertainable because its members may be identified by reference to Defendants’ records and Defendants have agreed to share the relevant information from their records to facilitate the settlement process. DS ¶ 38.

2. Commonality

Rule 23(a) requires that “there are questions of law or fact common to the class.” However, “all questions of fact and law need not be common to satisfy the rule...[and] [t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1019 (9th Cir.



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1 1998). The Ninth Circuit has held that commonality exists “where the lawsuit
2 challenges a system-wide practice or policy that affects all of the putative class
3 members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). In light of the
4 more lenient standard for certification of a settlement class, the Parties agree that
5 for the purposes of the Settlement only, the claims of the Class Members all stem
6 from the same sources. DS ¶ 40.

7 In this case, Plaintiffs assert all Class Members were subject to the same or
8 similar operations and employment policies, practices, and procedures. The claims
9 arise from Defendants’ alleged policy-driven failure to pay wages, unauthorized
10 and unlawful wage deductions, failure to provide meal periods, failure to authorize
11 and permit rest periods, failure to indemnify for business expenses, failure to issue
12 proper wage statements, failure to timely pay wages, failure to maintain required
13 payroll records, and related labor law violations, all of which Plaintiffs claim
14 constitute unfair business practices and give rise to PAGA penalties. Plaintiffs
15 assert that common questions include, but are not limited to: (1) Whether
16 Defendants failed to pay all wages earned to Class Members for all hours worked
17 at the correct rates of pay; (2) Whether Defendants failed to provide the class with
18 all meal and rest periods in compliance with California law; (3) Whether
19 Defendants failed to pay the class one additional hour of pay on workdays they
20 failed to provide the class with one or more meal or rest periods in compliance with
21 California law; (4) Whether Defendants failed to indemnify the class for all
22 necessary business expenditures incurred during the discharge of their duties; (5)
23 Whether Defendants knowingly and intentionally failed to provide the class with
24 accurate wage statements; (6) Whether Defendants willfully failed to provide the
25 class with timely final wages; and (7) Whether Defendants engaged in unfair
26 competition within the meaning of Business and Professions Code section 17200,
27 *et seq.*, with respect to the class. DS ¶ 40. Courts in the Ninth Circuit have found
28



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1 this sufficient to show commonality.⁵

2 **3. Typicality**

3 Rule 23(a) requires that “the claims or defenses of the representative parties
4 are typical of the claims or defenses of the class.” This requirement is “permissive”
5 and requires only that the representative’s claims are reasonably related to those of
6 the absent class members. *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010).

7 Plaintiffs contend that their claims are typical for the purposes of certifying
8 the Settlement Class. Plaintiffs assert that they, like absent Class Members, were
9 subject to the same relevant policies and procedures governing their compensation,
10 hours of work and meal and rest periods. Because Plaintiffs contend that they were
11 subject to the same general course of conduct as absent Class Members, resolving
12 the common questions as they apply to Plaintiffs will determine Defendants’ *prima*
13 *facie* liability to all Class Members. Moreover, Plaintiffs’ claims could potentially
14 be subject to the same primary affirmative defenses as those of absent Class
15 Members. Accordingly, Plaintiffs’ claims are typical of the Class. DS ¶ 41.

16 **4. Adequacy**

17 Rule 23(a)(4) is satisfied if “the representative parties will fairly and
18 adequately protect the interests of the class,” Fed. R. Civ. P. 23(a)(4). “Resolution
19 of two questions determines legal adequacy: (1) do the named plaintiffs and their
20 counsel have any conflicts of interest with other class members and (2) will the
21 named plaintiffs and their counsel prosecute the action vigorously on behalf of the
22 class?” *Hanlon*, 150 F.3d at 1020.

23 First, Class Counsel have supplied the Court with declarations to show that

24
25
26 ⁵ See, e.g., *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 963 (9th Cir. 2013);
27 *Cummings v. Starbucks Corp.*, No. CV 12-06345-MWF FFMX, 2014 WL
28 1379119, at *10 (C.D. Cal. Mar. 24, 2014); *Hopkins v. Stryker Sales Corp.*, No.
5:11-CV-02786-LHK, 2012 WL 1715091, at *5 (N.D. Cal. May 14, 2012) (citing
cases).



1 they are adequate to represent the Settlement Class and that they have significant
2 experience in employment litigation generally, and wage and hour and
3 employment-related class action litigation specifically. See DS ¶¶ 43-50;
4 Declaration of Walter L. Haines (“Haines Decl.”) ¶¶ 1-4; Piazza Decl., ¶¶ 4-9;.
5 Thus, Plaintiffs’ counsel are adequate to serve as Class Counsel.

6 Second, Plaintiffs contend that they are adequate class representatives.
7 Plaintiffs and the Class Members have strong and co-extensive interests in this
8 litigation because they all worked for Defendants during the relevant time period,
9 allegedly suffered the same alleged injuries from the same alleged course of
10 conduct, and there is no evidence of any conflict of interest between Plaintiffs and
11 the Class Members. DS ¶ 42. Moreover, Plaintiffs have demonstrated their
12 commitment to the Settlement Class by, among other things, retaining experienced
13 counsel, providing counsel with documents and extensively speaking with them to
14 assist in identifying the claims asserted in this case, assisting them in identifying
15 witnesses, as well as exposing themselves to the risk of attorneys’ fees and costs
16 awards against them if this lawsuit had been unsuccessful. DS ¶ 42. Thus, Plaintiffs
17 are adequate to serve as settlement class representatives. Accordingly, this Court
18 should find that Plaintiffs and their counsel are adequate to represent the Settlement
19 Class as required under Rule 23.
20

21 **B. For Purposes of Settlement, the Proposed Class Meets the**
22 **Requirements of Rule 23(b).**

23 **1. Common Issues Predominate.**

24 In addition to the Rule 23(a) requirements, a court must find that common
25 issues of law or fact “predominate over any questions affecting only individual
26 members.” Fed. R. Civ. P. 23(b)(3). With regard to the requirements of subsection
27 (b), Rule 23(b)(3) allows class certification where common questions of law and
28 fact predominate over individual questions and class treatment is superior to
individual litigation. The predominance inquiry “tests whether proposed classes are



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1 sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.,*
2 *Inc. v. Windsor*, 521 U.S. 591 (1997). To determine whether common questions
3 predominate, a court is to consider “the relationship between the common and
4 individual issues.” The proposed Class in this case is sufficiently cohesive to
5 warrant adjudication by representation. Furthermore, because the “predominance”
6 factor concerns liability, any variation in damages is insufficient to defeat class
7 certification. *Leyva v. Medline Indus.*, 716 F.3d 510, 514 (9th Cir. 2013). Plaintiffs
8 contend that all claims in this litigation are based on allegedly common, class-wide
9 policies and procedures, and that liability could be determined on a class-wide
10 basis. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1033 (2012).
11 As noted above, the major issue of whether putative class members were able to
12 take legally compliant meal and rest breaks, were properly paid for all hours
13 worked at the correct rates of pay, and were reimbursed for business-related
14 expenses, stem from purported policies and practices applicable to the Class as a
15 whole.

16 **2. The Class Action Device Is Superior.**

17 To certify a class, the Court must also determine “that a class action is
18 superior to other available methods for the fair and efficient adjudication of the
19 controversy.” Fed. R. Civ. Proc. 23(b)(3). This requirement is met when
20 certification will reduce litigation costs and promote greater efficiency. *See*
21 *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (“Where
22 class-wide litigation of common issues will reduce litigation costs and promote
23 greater efficiency, a class action may be superior”).

24 Here, a class action is the superior mechanism because it will limit
25 duplicative litigation and limit the burden on the Court for the settlement of the
26 claims of over 5,750 employees. *See Lockwood Motors*, 162 F.R.D. at 582



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1 (“Having concluded that common questions predominate, th[e] [superiority]
2 requirement is readily satisfied in this case. Class prosecution of this action will
3 limit duplicative litigation, limit the burden on this and other courts, and provide a
4 uniform result for similarly situated parties.”).

5 Plaintiffs further contend that a class action is also superior to other means
6 of adjudicating the issues in this action. The predominance of common legal and
7 factual questions shows that this Court could fairly adjudicate the claims of Class
8 Members through a single class action. In view of the *theoretical* alternatives that
9 proposed class members could potentially utilize—representative PAGA action
10 (where there is less relief available), individual civil lawsuits or wage claims
11 through the Division of Labor Standards Enforcement (where there would be
12 relatively little money at stake, but the claims would be time-consuming to
13 litigate)—a class action is plainly superior to all of them. Thus, this consideration
14 supports conditional class action treatment for purposes of this Settlement only. DS
15 ¶ 51.

16 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE**
17 **SETTLEMENT.**

18 When a proposed class-wide settlement is reached, the settlement must be
19 submitted to the court for approval. Fed. R. Civ. P. 23(e). The overarching inquiry
20 on a motion for preliminary approval of a proposed class action settlement is
21 whether the proposed settlement is “within the range of possible approval.” See
22 *Williams v. Costco Wholesale Corp.*, 2010 WL 761122, *5 (S.D. Cal. March 4,
23 2010) (“[A]t the preliminary approval stage, the Court need only review the parties’
24 proposed settlement to determine whether it is within the permissible ‘range of
25 possible judicial approval.’”).

26 Preliminary approval does not require the trial court to answer the ultimate
27 question of whether a proposed settlement is “fair, reasonable and adequate.”
28



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1 Rubenstein, 4 *Newberg on Class Actions* § 13:13 (“[T]he goal of preliminary
2 approval is for a court to determine whether notice of the proposed settlement
3 should be sent to the class, not make a final determination of the settlement’s
4 fairness”). That determination is made only after notice of the settlement has been
5 given to the members of the class and after the class members have been given an
6 opportunity to voice their views of the settlement or to be excluded from the
7 settlement class. *See Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24,
8 2008) (“a full fairness analysis is unnecessary at this [preliminary] stage . . . The
9 court, therefore, will simply conduct a cursory review of the terms of the parties’
10 settlement for the purpose of resolving any glaring deficiencies before ordering the
11 parties to send the proposal to class members.”).

12 “At this stage, the court may grant preliminary approval of a settlement and
13 direct notice to the class if the settlement: ‘(1) appears to be the product of serious,
14 informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not
15 improperly grant preferential treatment to class representatives or segments of the
16 class; and (4) falls within the range of possible approval.’” *Spann v. J.C. Penney*
17 *Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016); *Tinoco v. Hajoca Corp.*, 2019 WL
18 4239130, at *4 (C.D. Cal. June 18, 2019).

19 **A. The Settlement Is The Product Of Serious, Informed, And Non-**
20 **Collusive Negotiations.**

21 The Settlement resulted from thorough, arms’ length, negotiations between
22 experienced counsel with the assistance of a respected mediator and a Magistrate
23 Judge after sufficient discovery was exchanged to assess the relative strengths and
24 weaknesses of their respective cases and Defendants’ estimated exposure. DS ¶ 52.
25 A settlement for approximately 28.39% of the potential recovery (as discussed
26 below) is a proportion substantially in excess of recovery proportions sanctioned by



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existing case law.⁶ DS ¶¶ 53-54.

As discussed below, Plaintiffs' initial estimates did not realistically account for the risks presented in this case or the risk that a class will not be certified. Therefore, Plaintiffs believes a class settlement for \$4,100,000.00 is fair and reasonable. DS ¶ 55.

Moreover, nothing about the settlement indicates collusion, with "subtle signs" of collusion absent: Plaintiffs' counsel do not stand to receive a disproportionate distribution of the settlement, there is no clear sailing provision on attorneys' fees, and there is no reversion of unawarded funds to Defendants. DS ¶ 56. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

B. The Settlement Has No Obvious Deficiencies And Does Not Grant Any Improper Preferential Treatment.

The relief provided in the Settlement will benefit all Class Members proportionally. Each Participating Class Member's share will be calculated based on his or her total number of Workweeks compared to other Settlement Class Members' workweeks. Settlement ¶ 3.2.4. Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendants longer would have been subject to more alleged violations, it is fair, adequate, and reasonable. *See Harris v. Vector Mktg. Corp.*, 2011 WL

⁶ *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998) ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, 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.*, 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").



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1 1627973, at *9 (N.D. Cal. Apr. 29, 2011) (no preferential treatment where
2 settlement “provides equal relief to all class members” and “distributions to each
3 class member—including Plaintiff—are calculated in the same way”).

4 The relief provided in the Settlement will not result in preferential treatment
5 for the Class Representatives. Each Plaintiff will apply to the Court for a Class
6 Representative Service Payment in a reasonable amount. DS ¶ 57. Plaintiffs
7 participated in the investigation of the class-wide claims, actively assisted Class
8 Counsel in identifying the alleged issues at the heart of litigation, and consulted
9 with Class Counsel regarding the factual allegations and defenses in the case. *Id.*
10 An incentive award is appropriate given each Plaintiff’s participation in the Action
11 and general release of all known and unknown claims.⁷

12 **C. The Settlement Falls Within The Range For Approval.**

13 **1. The Settlement Is Reasonable In The Experienced Views Of**
14 **Counsel.**

15 “Because the parties’ counsel are the ones most familiar with the facts of the
16 litigation, courts give ‘great weight’ to their recommendations.” *Shannon*, 2020
17 WL 2394932, at *10 (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*,
18 221 F.R.D. 523, 528 (C.D. Cal. 2004)); *see also In re Pac. Enters. Secs. Litig.*, 47
19 F.3d 373, 378 (9th Cir. 1995) (“Parties represented by competent counsel are better
20 positioned than courts to produce a settlement that fairly reflects each party’s
21 expected outcome in litigation.”). “Therefore, the plaintiffs’ counsel’s
22 recommendations ‘should be given a presumption of reasonableness.’” *Shannon*,
23 2020 WL 2394932, at *10 (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622
24 (N.D. Cal. 1979)). Class Counsel believe that the Settlement is fair, reasonable,
25 adequate, and in the best interest of the Class Members. DS ¶¶ 52, 77; Declaration

26 ⁷*See, e.g., Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal.
27 2015) (awarding \$15,000 to class representative); *Miletak v. Allstate Ins. Co.*, 2012
28 WL 12921306, at *5 (N.D. Cal. July 12, 2012) (awarding \$15,000 to class
representative).



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1 of Walter Haines (“Haines Decl.”), ¶ 4; Piazza Decl., ¶¶ 4-9. Class Counsel each
2 have over a decade of legal experience and have been appointed lead counsel in
3 dozens of class actions, including numerous wage and hour class actions. DS ¶¶
4 43-50, Haines Decl. ¶¶ 2-4; Piazza Decl., ¶¶ 4-8. Accordingly, the Settlement
5 “should be given a presumption of reasonableness.”⁸

6 **2. The Settlement Is Reasonable In Light Of The Expected**
7 **Recovery.**

8 The Settlement is reasonable in light of Plaintiffs’ and the Class Members’
9 expected recovery if they prevailed at trial. In preparing for the mediation and the
10 three settlement conferences with the Court, Plaintiffs’ counsel prepared
11 spreadsheets to determine Defendants’ maximum exposure with the aid of a payroll
12 data analyst. Plaintiffs’ theories of recovery are: (1) Failure To Provide Meal
13 Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned
14 For All Hours Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; (5)
15 Wage Statement Penalties; (6) Waiting Time Penalties; (7) Unfair Competition; and
16 (8) Civil Penalties (Lab.Code §§ 2698, *et seq.*). DS ¶ 53. Plaintiffs determined
17 Defendants’ maximum possible exposure for restitution and penalties to be
18 approximately \$146,291,768.00 (consisting of \$20,498,459.57 in unpaid wages,
19 \$23,595,205.30 in missed meal period premium wages, \$24,498,765.01 in missed
20 rest break premium wages, \$94,875.00 in unreimbursed expenses, \$7,645,300.00
21 for wage statement penalties, \$20,296,363.10 for waiting time penalties, and
22 \$49,662,800.00 for civil penalties under PAGA. Plaintiffs calculated the damages
23 based on the number of workweeks and pay periods provided by Defendants,
24 Plaintiffs’ reports, and the sample data. *Id.*, Exhibit 6.



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⁸*Saenz v. Lowe's Home Centers, LLC*, 2019 WL 3456810, at *4 (C.D. Cal. July 31, 2019); *Palmer v. Pier 1 Imports, Inc.*, 2018 WL 6133692, at *9 (C.D. Cal. Jan. 9, 2018).

1 However, based on the difficulties of proof, the Defendants' defenses,
2 and the other attendant risks Plaintiffs identify below, Plaintiffs estimate the
3 likely awards at trial should Plaintiffs prevail to be the following amounts:

4 a. Unpaid wages and liquidated damages with interest in the
5 amount of \$683,008.00;

6 b. Meal period premium wages with interest in the amount of
7 \$2,259,663.00;

8 c. Rest period premium wages with interest in the amount of
9 \$2,449,876.00;

10 d. Unreimbursed expenses with interest in the amount of
11 \$18,975.00;

12 e. Statutory pay stub penalties in the amount of \$0.00;

13 f. Waiting time penalties in the amount of \$0.00; and

14 g. Civil penalties in the amount of \$9,029,600.00.
15

16 The total of these amounts is \$14,441,122.00. The Gross Settlement Amount
17 of \$4,100,000.00 is 28.39% of this amount. DS ¶ 78. A settlement for
18 approximately 28.39% of the potential recovery is a proportion substantially in
19 excess of recovery proportions sanctioned by existing case law.⁹ DS ¶ 54.
20

21 ⁹ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C.
22 Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a
23 total trial recovery . . . seems to be within the targeted range of reasonableness.”);
24 *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D.
25 Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation
26 to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017
27 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent
28 recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision
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1 **3. The Settlement Is Reasonable Given The Substantial Risks**
2 **Of Continued Litigation.**

3 The Settlement is appropriate here due to the substantial risks faced by
4 Plaintiffs concerning class certification. *See Bee, Denning, Inc. v. Capital All. Grp.*,
5 2016 WL 3952153, at *8 (S.D. Cal. July 21, 2016) (granting preliminary approval
6 based in part on likelihood of continued, expensive litigation and plaintiff’s
7 “substantial risk of being unsuccessful at trial”).

8 **a. Risks Associated With the Arbitration Agreements**

9 The arbitration agreements entered into between Defendant Express on the
10 one hand, Eve Storm, and the other temp worker Class Members, on the other,
11 present a significant risk to the success of Plaintiffs’ class action litigation. DS ¶ 58.
12 According to Defendant Express, the majority of the temp worker Class entered into
13 arbitration agreements with Defendants. *Id.* As the arbitration agreements in
14 question restrict potential litigants from bringing class actions against Defendants,
15 Plaintiffs would be effectively barred from pursuing claims on behalf of the Class
16 in Court. *Id.* As such, by continuing to trial on class-wide claims, Plaintiffs would
17 run the high risk of suffering defeat for many class members due to the existence of
18 the arbitration agreement. Moreover, the arbitration agreements would pose danger
19 to any class certification motion brought by Plaintiffs. Because different defenses
20 would apply to some Class Members and not others – i.e., the existence of signed
21 arbitration agreements – there is a risk that the Court could determine that Plaintiffs’
22 claims present too many individualized inquiries to justify class certification. *Id.*

23 **b. Risks Associated with the Unpaid Wages Claim**

24 There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely
25 limited at best, largely because Defendants’ written policies throughout the relevant
26 time period prohibited off-the-clock work. DS ¶ 59. Off-the-clock claims are
27 difficult where a defendant requires in its written policies that all work must take
28 place while clocked in. *See Jong v. Kaiser Foundation Hospital* (2014) 226



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1 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to be
2 compensable). *Id.* In its written employment policies, Defendants mandate that
3 employees must record all time worked accurately on their time records and strictly
4 prohibit employees from performing any work off-the-clock. *Id.* Moreover, while
5 Defendants dispute that off-the-clock work - long waits to park and complete health
6 screening, security procedures, and time clock procedures - occurred, they contend
7 that any time spent off the clock was *de minimis*. The California Supreme Court in
8 *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and
9 minute periods of time may still be subject to a *de minimis* defense even if
10 compensable (stating that “We do not decide whether there are circumstances where
11 compensable time is so minute or irregular that it is unreasonable to expect the time
12 to be recorded.”). Following *Troester*, Defendants contends that the *de minimis*
13 doctrine may apply here because the time spent off the clock were minute and
14 insignificant. Accordingly, a large award of penalties seems unlikely with respect
15 to this claim. *Id.*

16 The difficulty inherent in proving that off-the-clock work - long waits to park
17 and complete health screening, security procedures, and time clock procedures -
18 occurred poses a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations
19 and witness statements to prove this claim. Generally, a court will not certify a class
20 unless it can determine an appropriate classwide methodology. *See, e.g., Duran v.*
21 *U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here, Plaintiffs may rely heavily
22 on anecdotal evidence to prove the off-the-clock work claim, especially given the
23 lack of records indicating when such off-the-clock work may have taken place.
24 Individualized inquiries would need to be conducted person-by-person, day-by-day,
25 to determine if an individual in fact worked “minutes” off-the-clock on a “regular”
26 basis. Accordingly, there is a significant risk that the Court would consider this
27 evidentiary showing insufficient as a classwide methodology. DS ¶ 60.
28



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1 With regard to Plaintiffs' overtime rate underpayment claims, Plaintiffs did
2 not discover that Defendants failed to include all forms of nondiscretionary
3 compensation in the regular rates of pay, and very few employees earned bonuses
4 that would have had anything but a negligible impact on their regular rate of pay.
5 At best, the failure to include bonuses in the regular rate of pay for determining
6 overtime payments and premium pay for missed meal and rest breaks would serve
7 as grounds for waiting time and pay stubs penalties – and only if they were proven
8 to be willful, knowing and intentional. DS ¶ 61.

9 **c. Risks Associated with the Meal Period Claims**

10 There are risks to Plaintiffs' meal period claim. DS ¶ 62. At each of its
11 California distribution centers, Defendant O'Reilly maintained two break rooms,
12 one within the metal detector gates and one outside of it. These break rooms had a
13 television, tables, chairs, vending machines, a refrigerator and a microwave.
14 Employees could visit one of the break rooms at each of the distribution centers
15 without passing through the metal detector gates. Defendant O'Reilly provided
16 evidence that employees chose to use these break rooms for meal periods rather
17 than exiting the facility, though Defendant O'Reilly gave them the option to do so.
18 Further, Defendant O'Reilly had policies that provided for meal periods of up to one
19 hour. The time records of Defendants' hourly distribution center workers show
20 many instances when they took meal periods exceeding 32 minutes without
21 discipline. Therefore, employees could enjoy a duty free 30-minute lunch period
22 even if they spent two (2) minutes passing through security at its beginning and end.
23 Finally, Defendants paid over \$110,000.00 in meal period premium wages
24 throughout the Class Period. This evidence suggests that Defendants in good faith
25 paid meal premiums when they learned employees had missed a meal period.
26 Defendants contend that, to establish a violation for missed meal periods, a plaintiff
27 must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at
28



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1 1004. So long as an employer provides employees with a “reasonable opportunity”
2 to take a duty-free meal period, it has no further duty to “police meal breaks and
3 ensure no work thereafter is performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must
4 show the employer impeded, discouraged, or prohibited the employee from taking
5 a proper break, or otherwise failed to release the employee of all control. *Id.* “Thus,
6 the crucial issue with regard to the meal break claim is the reason that a particular
7 employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack*
8 (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

9 Defendants contend they did not impede or discourage Plaintiffs, or any other
10 employees, from taking their meal or rest periods. DS ¶ 63. Defendants’ policies
11 mandate that employees take at least a 30-minute, uninterrupted meal period and
12 record the beginning and ending time of their meal breaks each day on their time
13 records. *Id.* The time records that comprise the random sample Defendants
14 produced to Plaintiffs for purposes of mediation and settlement conferences show
15 that meal periods were taken the vast majority of the time. *Id.* Of the time records
16 that show a late, short or no lunch, individualized evidence may be necessary to
17 determine whether they occurred due to conduct of the Defendants or each of the
18 employees concerned. Accordingly, there is a significant risk that the value of
19 Plaintiffs’ meal period claim would be substantially reduced at trial. *Id.*

21 **d. Risks Associated with the Rest Break Claims**

22 There are risks to Plaintiffs’ rest period claim. DS ¶ 64. As stated above,
23 Defendant O'Reilly provided break rooms to its employees. *Id.* The employees did
24 not need to pass through security to access one of these break rooms at each
25 distribution center. *Id.* There was evidence that employees chose to spend their
26 breaks in these breakrooms because the rest break were short. *Id.* Defendants also
27 had policies allowing for up to 15 minutes for rest breaks. *Id.* Therefore, employees
28 could enjoy a duty free ten minutes even if they spent five (5) minutes passing



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1 through security at the beginning and end of the break. *Id.* Also, it is unclear from
2 the California Supreme Court decision in *Augustus v. ABM Security Services, Inc.*,
3 2 Cal.5th 257 (2017) whether an employer is obligated to allow its employees to
4 leave the premises for rest breaks. *Id.* Employers are not required to record rest
5 periods and such periods are paid. *Id.* Defendants contend they provided non-
6 exempt employees the opportunity to take rest periods in accordance with
7 California law. *Id.* Further, Defendants’ written policies on meal and rest periods
8 are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are
9 often records showing whether an employee clocked out or not, there is no such
10 evidence to prove a missed rest period or that the employer refused to authorize and
11 permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
12 Plaintiffs will depend on sample witness testimony and surveys to prove the claims.
13 *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes
14 such claims risky from a trial management and due process perspective. *Id.*; see
15 *Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f
16 sufficient common questions exist to support class certification, it may be possible
17 to manage individual issues through the use of surveys and statistical sampling.”);
18 *Tyson Foods, Inc. v. Bouphakeo*, 136 S.Ct. 382 (2015); *Comcast Corporation v.*
19 *Behrend*, 133 S.Ct. 1426 (2013) .

21 **e. Risks Associated with the Failure to Indemnify**
22 **Claim**

23 There is a risk that the Court may consider Plaintiffs’ claims as to
24 Defendants’ alleged failure to indemnify for business expenses to be individual in
25 nature and thus decline to certify the class. DS ¶ 65. Defendants had policies that
26 provided for expense reimbursement. There was also evidence that Defendants
27 made masks and gloves available during the pandemic. Plaintiffs allege that
28 Defendants required Plaintiffs and the Class Members to use their own PPE and



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1 tools, and failed to indemnify them for these business expenses. *Id.* Defendants
2 presented evidence that they had supplied their employees with tools, equipment,
3 and other supplies and had an expense reimbursement policy. Plaintiffs also
4 discovered that employees did not use their mobile phone for work. As such, there
5 is a risk that the Court may consider Plaintiffs' claims to be individualized in nature
6 and unfit for class wide resolution. *Id.*

7 **f. Risks Associated with the Wage Statement Claims**

8 Plaintiffs also assert claims for wage statement violations, untimely wage
9 violations, and PAGA penalties. Defendants at all times issued itemized wage
10 statements with all categories of information required by Labor Code section 226,
11 though the parties dispute whether the information Defendants stated on this pay
12 stubs is accurate. Under Labor Code section 226, wage statements must include
13 various information, including the applicable rates of pay, corresponding hours
14 worked, and gross pay. DS ¶ 66. The great challenge here is proving that Defendants
15 knowingly and intentionally withheld accurate and complete information from the
16 pay stubs. Further, the California Supreme Court recently held that an employer is
17 not subject to statutory penalties for providing incomplete or inaccurate wage
18 statements if it reasonably and in good faith believed the statements were accurate:

19 In short, the Court of Appeal in this case correctly concluded that when an
20 employer shows that it reasonably and in good faith, albeit mistakenly,
21 believed that it complied with section 226, subdivision (a), that employer's
22 failure to comply with wage statement requirements is not "knowing and
23 section 226, subdivision (e)(1).

24 *Naranjo v. Spectrum Sec. Servs., Inc.*, No. S279397, 2024 WL 1979980, at *18
25 (Cal. May 6, 2024).

26 Here, Plaintiffs' wage statement claim has the same underlying risks as the
27 above claims, as it is derivative of them. *Id.* On their face, the wage statements
28



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1 issued by Defendants comply with the requirements of Labor Code § 226. *Id.*

2 **g. Risks Associated with the Sick Leave Claims**

3 These claims are particularly risky given the fact that Plaintiffs' pay stubs
4 show sick leave use and accrual. DS ¶ 67.

5 **h. Risks Associated with the Waiting Time Penalty**
6 **Claims.**

7 This is a derivative claim like the pay stub claim. Without proof of willful
8 behavior, Plaintiffs will be unable to recover these penalties. DS ¶ 68.

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

10 Many of the Labor Code sections Plaintiffs allege were violated have the
11 same civil penalty. Of the Labor Code sections that Plaintiffs allege were violated,
12 the following 20 statutes qualify for the default civil penalty of Labor Code section
13 2699(f)(2): Labor Code sections 90.5(a), 201, 201.3, 202, 203, 218, 218.5, 218.6,
14 226, 246, 1182.12, 1194, 1194.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404. It
15 is difficult to imagine even the most employee-friendly court stacking a \$100
16 penalty 20 times for the same employee for the same pay period even if violations
17 of all of these statutes were proven.

18 Under PAGA, a court has discretion to award a lesser amount than the
19 maximum penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit*
20 *Management, Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (reducing PAGA award).
21 As set forth above, Defendants have posed valid defenses to the Labor Code claims
22 underlying Plaintiffs' PAGA allegations and there are serious risks to proving
23 Defendants acted intentionally, knowingly, and willfully in violating the rights of
24 Class Members under the Labor Code. There is a risk that the Court would consider
25 the maximum civil penalty available to be confiscatory. Moreover, the COVID-19
26 pandemic - the factual predicate for such of Plaintiffs' off-the-clock claims - could
27 motivate the Court to further reduce the penalty award to avoid what it may consider
28 a confiscatory taking. Thus, the PAGA claims likewise face significant uncertainty.



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1 DS ¶ 69.

2 For mediation and settlement conference purposes, Plaintiffs’ counsel
3 estimated a maximum possible exposure of approximately \$49,662,800.00 in civil
4 penalties. This estimate did not take into account any of the risks discussed above
5 and assumed a violation for every single pay period. DS ¶¶ 69-71, Exhibit 6.
6 Plaintiffs’ counsel also assessed multiple penalties for the same pay period for the
7 same alleged violations of different Labor Code provisions and derivative
8 violations. *Id.* Although two federal district court decisions held that “stacking”
9 PAGA penalties in this fashion may be appropriate to determine the amount in
10 controversy for purposes of removal jurisdiction, Plaintiffs’ counsel is not aware of
11 any California state courts awarding plaintiffs multiple PAGA penalties for the
12 same violation for the same pay period under different Labor Code provisions. *Id.*
13 This may be because the PAGA does not provide for what many employers
14 characterize as claim splitting and not merely stacking. *Id.*; *see also* DS ¶¶ 72-73.

15 With regard to the Plaintiffs’ assertion that Defendants violated the
16 warehouse productivity standards of Labor Code sections 2102 and 2103 (which
17 took effect in 2022), Plaintiffs discovered that Class Members generally had five
18 (5) minutes longer time for breaks that the Wage Order requires and use of restroom
19 facilities. They also discovered that the warehouse workers were not on-call during
20 rest and meal periods. Defendants utilize reports of warehouse scan use by
21 employees as one way of determining the productivity of an employee, though not
22 all of Defendants’ employees use scan guns for all or any of their duties. The
23 Defendants’ warehouse drivers – a large portion of the class, for example, do not
24 spend most of their time scanning but driving. DS ¶ 74.

25 With regard to Plaintiffs’ claim that toilet and storage facilities, lockers, and
26 change rooms were inadequate and temperatures either too hot or too cold,
27 Defendants produced photographs of their ample toilet facilities and lockers.
28



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1 Though the restrooms could be used for changing clothing, there was no need for
2 this as the employees did not wear uniforms and generally came to work wearing
3 their work clothing. Plaintiffs did not discover any records showing historical
4 temperatures in the toilet facilities or locker areas of less than 68 degrees as required
5 by the Wage Order. DS ¶ 75.

6 **i. Risks Associated With A Pick-Up Stix Campaign**

7 An employer enjoys the right to settle a putative class member's disputed
8 wage claims individually, without the consent or involvement of class counsel. DS
9 ¶ 76; *see also Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796 (2009). As
10 discussed above, Defendant may launch a "pick off" settlement campaign to pursue
11 individual release agreements from the Class Members, thereby potentially
12 narrowing the size of the Settlement Class – 5,750 members - until it is no longer
13 numerous enough for class certification. *Id.* Plaintiffs, then, may not have sufficient
14 numbers of employees to represent. This led to a significant reduction of claim
15 value in settlement negotiations. *Id.*

16 While the evidence gathered through Plaintiffs' discovery supports the merits
17 of the claims asserted in this lawsuit, Plaintiffs and their counsel recognize that
18 continued litigation presents significant risks that support a downward departure
19 from Defendants' estimated liability exposure. DS ¶ 77. In view of the risks, the
20 Settlement reflects Plaintiffs' estimate of the total amount of damages, monetary
21 penalties or other relief that the Class could reasonably expect to be awarded at trial,
22 taking into account the likelihood of prevailing and other attendant risks. *Id.* It also
23 represents a fair, adequate, and reasonable compromise amount for these claims and
24 warrants preliminary approval. *Id.*; *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370,
25 1376 (9th Cir. 1993) (the financial condition of defendant predominated in
26 assessing the reasonableness of settlement); *Spann v. J.C. Penney Corp.*, 211 F.
27 Supp. 3d 1244, 1256 (C.D. Cal. 2016) (uncertainty concerning defendant's financial
28



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1 stability “strongly supports the reasonableness of the settlement”); *Laguna v.*
2 *Coverall N. Am., Inc.*, Case No. 12-55479, 2014 WL 2465049, * 3 (9th Cir. June 3,
3 2014).

4 **4. Allocation of the PAGA Payment**

5 The settlement of PAGA penalties in the sum of \$410,000.00, of which 75%
6 (\$307,500.00) will be paid to the LWDA and 25% (\$102,500.00) will be distributed
7 to the Class, is reasonable and appropriate under the circumstances. DS ¶ 79. The
8 Parties negotiated a good faith amount for PAGA Penalties to be paid to the LWDA
9 and to the Class. *Id.* The portion to be paid to the LWDA was not the result of self-
10 interest at the expense of other Class Members. *Id.* Where settlements “negotiate[]
11 a good faith amount” for PAGA penalties and “there is no indication that this
12 amount was the result of self-interest at the expense of other Class Members,” such
13 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No.
14 CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Likewise,
15 where the employer did not act willfully, and made good faith attempts to comply
16 with wage and hour laws, a reduction or lesser penalty is warranted because
17 imposing maximum PAGA penalty for each violation would have been unjust,
18 arbitrary, and oppressive. *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 528-
19 529 (2018) (affirming trial court’s award of only 10% of maximum PAGA penalty
20 for meal break violations). The amount to be paid to the LWDA comports with
21 PAGA settlement amounts approved by other courts. *See, e.g., Chu v. Wells Fargo*
22 *Investments, LLC*, 2011 WL 67245, 81 (N.D. Cal., Feb. 16, 2011) (approving
23 PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v.*
24 *Pro Unlimited, Inc.*, 2013 WL 3541217 (N.D. Cal., July 11, 2013) (approving
25 PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement);
26 *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, at *1 (N.D. Cal. Aug. 8, 2008)
27 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases*, 186
28



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1 Cal.App.4th 576, 589 (2010) (approving PAGA settlement and release that
2 allocated \$0 to PAGA claim). Courts have also approved settlements for \$20,000
3 or less. *See, e.g., Hicks v. Toys 'R' Us—Delaware, Inc.*, 2014 WL 4703915, at *1
4 (C.D. Cal. Sept. 2, 2014) (approving \$5,000 PAGA payment in a case involving \$4
5 million settlement); *Franco v. Ruiz Food Prods., Inc.*, 2012 WL 5941801 at *14
6 (E.D. Cal. Nov. 27, 2012) (approving PAGA penalties of \$10,000 as part of \$2.5
7 million settlement); *Garcia v. Gordon Trucking*, 2012 WL 5364575, at *3 (E.D.
8 Cal. Oct. 31, 2012) (approving PAGA payment of \$10,000 as part of \$3.7 million
9 common-fund settlement). DS ¶ 79.

10 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
11 **COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY**
12 **EACH CLASS MEMBER BASED ON THE POTENTIAL EXTENT**
13 **OF THEIR INJURY COMPARED TO OTHER CLASS MEMBERS.**

14 The Individual Settlement Payments will be paid to each Class Member
15 based on their eligible Workweeks compared to the total Workweeks. DS ¶ 97;
16 Settlement ¶ 3.2. Because this method compensates Class Members based on the
17 extent of their potential injuries, in that Class Members who worked for Defendants
18 longer would have been subject to more alleged violations, it is fair, adequate, and
19 reasonable. *Id.*

20 Plaintiffs estimate that there are 289,537 Class Period Workweeks. So, each
21 Workweek has a value of approximately \$7.26 (\$2,103,333.33 Net Settlement
22 Amount / 289,537 Workweeks = \$7.26). The average estimated Individual Class
23 Payment to Class Members will be approximately \$365.80. Some Class Members
24 – those who worked more Workweeks during the Class Period - will receive more,
25 and some less. The highest possible Individual Class Payment to a Class Member
26 (i.e., to those who qualify for all Workweeks in the Class Period) will be
27 approximately \$1,111.52. The lowest possible Individual Class Payment to a Class
28 Member (i.e., to those who qualify for only one Workweek in the Class Period) will



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1 be approximately \$7.26. See DS, ¶¶ 95-96.

2 It is anticipated that the average Aggrieved Employee's Individual PAGA
3 Payment will be \$23.77. Plaintiffs' Individual PAGA Payments, their individual
4 shares of 25% of the PAGA Penalties, will be less than that of some absent
5 Aggrieved Employees. Under the Settlement, each Aggrieved Employee will
6 receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the
7 number of paychecks he or she had with Defendants during the PAGA Period,
8 compared to the total of all paychecks of all Aggrieved Employees during the
9 PAGA Period, as reflected by Defendants' records. Plaintiffs estimate that there are
10 78,609 Aggrieved Employee paychecks/Workweeks for the PAGA Pay Period.
11 So, each Aggrieved Employee paycheck from the PAGA Period has a value of
12 approximately \$1.30 (25% of \$410,000.00 in PAGA Penalties / 78,609 Aggrieved
13 Employee paychecks = \$1.30). The average estimated Individual PAGA Payment
14 to an Aggrieved Employee will be approximately \$23.77 (\$102,500.00, 25% of
15 PAGA Penalties / 4,312 Aggrieved Employee during the PAGA Period = \$23.77
16 Individual PAGA Payment). Some Aggrieved Employees – those who had more
17 paychecks during the PAGA Period - will receive more, and some less. The highest
18 possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those who
19 qualify for all paychecks in the PAGA Period) will be approximately \$136.72. The
20 lowest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to those
21 who qualify for only one paycheck in the PAGA Period) will be approximately
22 \$1.30. See DS, ¶ 98.

23
24 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND**
25 **ATTORNEYS' FEES AND COSTS AWARD FOR LITIGATION**
26 **EXPENSES IS APPROPRIATE**

27 The Settlement states Class Counsel may seek attorneys' fees of
28 \$1,366,666.67 (one-third of the GSA) and up to \$120,000.00 for actual reasonable
litigation costs and expenses incurred in prosecuting the Action. Settlement ¶ 3.1.



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1 These amounts are reasonable, given the facts and circumstances of the case. DS ¶¶
2 80-83.

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

18 The amount of fees and costs requested are commensurate with (1) the risk
19 Class Counsel took in bringing the case, (2) the extensive time, effort and expense
20 dedicated to the case, (3) the skill and determination Class Counsel has shown, (4)
21 the results Class Counsel achieved, (5) the value of the Class Counsel achieved for
22 the class, and (6) the other cases Class Counsel turned down to devote time to this
23 matter. DS ¶ 81. Class Counsel interviewed and obtained information from putative
24 class members, met and conferred with Defendants’ counsel on numerous
25 occasions, reviewed and analyzed hundreds of pages of data and documents
26 provided by Defendants and obtained through other sources, researched applicable
27 law, and provided estimates of “damages” for purposes of settlement discussions,
28



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1 among other tasks. *Id.*

2 Class Counsel have borne all the risks and costs of litigation and will receive
3 no compensation until recovery is obtained. DS ¶ 82. Class Counsel are well-
4 experienced in wage-and-hour class action litigation and used that experience to
5 obtain a fair result for the Class. *Id.* Considering the amount of the attorney fees
6 requested, the work performed, and the risks incurred, the requested fees and costs
7 are reasonable and should be awarded. *Id.*

8 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS TO**
9 **PLAINTIFFS SHOULD BE PRELIMINARILY APPROVED**
10 **BECAUSE THEY ARE FAIR, ADEQUATE, AND REASONABLE.**

11 Courts routinely approve incentive awards to compensate named plaintiffs
12 for the services they provide and the risks they incur during class action litigation,
13 often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins.*
14 *Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to
15 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic*
16 *Richfield Co.*, 901 F.Supp. 294 (N.D.Cal. 1995) (approving \$50,000 enhancement
17 award). The Settlement provides that Plaintiffs may seek Class Representative
18 Service Payment of \$55,000.00 in total. This amount is entirely reasonable given
19 each Plaintiff’s efforts in this action and the risks they undertook on behalf of Class
20 Members. DS ¶ 84. Each Plaintiff has devoted many hours advancing the interests
21 of the Settlement Class. Each Plaintiff has done this by, among other things,
22 retaining experienced counsel, providing them with information about his/her work
23 history with Defendants and Defendants’ policies and practices with respect to the
24 wage and hour claims at issue, participating in settlement discussions, and being
25 actively involved in the settlement process to ensure a fair result for the Settlement
26 Class as a whole. In doing this, Plaintiffs have been exposed to significant risks,
27 including the risk of an order to pay Defendants’ attorneys’ fees and costs if this
28 action had been unsuccessful (*See Labor Code §§ 218.5-218.6*). The efforts and



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1 risks that Plaintiffs undertook on behalf of the Settlement Class show that the
2 proposed Class Representative Service Payments are fair, adequate, and reasonable,
3 and thus warrant preliminary approval. DS ¶¶ 84-94, Exs. 10-15.

4 **IX. THE PROPOSED CLAIMS ADMINISTRATION COSTS ARE FAIR**
5 **AND REASONABLE AND SHOULD BE PRELIMINARILY**
6 **APPROVED.**

7 With regard to the settlement administration costs (“Administration
8 Expenses Payment”) provision, it is reasonable. Before agreeing to Xpand Legal
9 Consulting LLC and its bid of \$40,000.00, the Parties sought and reviewed bids
10 from other reputable third-party administrators which provided higher bids. DS ¶
11 120-121, Exs. 16-19. Thus, the settlement administration costs provision should be
12 given preliminary approval.

13 **X. THE COURT SHOULD APPROVE THE PROPOSED CLASS**
14 **NOTICE AND NOTICE PLAN.**

15 Rule 23(c)(2)(B) requires that, in any case certified under Rule 23(b)(3), the
16 court must direct that class members be given the “best notice that is practicable”
17 under the circumstances. This does not require that each class member receive
18 “actual notice.” *Silber v. Mahon*, 18 F.3d 1449, 1454 (9th Cir. 1994). Rather, it
19 suffices if the manner in which notice is disseminated to class members is
20 “reasonably calculated, under all the circumstances, to apprise [them] of the action
21 and afford them an opportunity to present their objections.” *Mullane v. Central*
22 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

23 This Court should approve the proposed plans for giving notice to the
24 Settlement Class and administering the Settlement. The notice process includes
25 multiple measures to ensure that as many Class Members as practicable receive
26 actual notice of the Settlement and have enough time to exercise their rights. The
27 Settlement requires distribution of the Class Notice by First Class U.S. mail only.
28 Settlement ¶ 8.4.2. Although there are current employee Class Members, it is



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1 uncertain whether Defendants' records of their contact information include email
2 addresses and Class Members, who perform all of their work away from a desk, are
3 not in a position to check their emails. As such, notice by mail alone is fair,
4 adequate, and reasonable. DS ¶ 107.

5 With respect to its content, "[The] notice given to the class must fairly apprise
6 the class members of the terms of the proposed compromise and of the options open
7 to dissenting class members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.*, 48
8 Cal.App.3d 134, 151-152 (1975). The purpose of the notice in class settlement
9 context is to give class members sufficient information to decide whether they
10 should accept the benefits offered, opt out and pursue their own remedies, or object
11 to the settlement. *Id.* The Class Notice (**Exhibit A** to the Settlement) provides Class
12 Members with all pertinent information that they need to fully evaluate their options
13 and exercise their rights under the Settlement. Specifically, it clearly and concisely
14 explains, among other things: (1) what the Settlement is about; (2) who is a
15 Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit
16 an exclusion request not to be bound by the Settlement; (5) how to object to the
17 Settlement; (6) how the Settlement will be allocated; (7) how payments to Class
18 Members will be calculated; (8) how the disputes will be resolved; and (9) the
19 individual Settlement Class Member's estimated payment. Additionally, the Class
20 Notice will include the number of Work Weeks a Class Member had during the
21 Class Period. Accordingly, the Notice should be approved because it describes the
22 Settlement with sufficient clarity and specificity to explain to Class Members what
23 this action is about, their rights under the Settlement, and how to exercise those
24 rights. If the settlement is preliminarily approved, Class Members will be provided
25 with the Class Notice and an opportunity to object. The Parties' proposed notice
26 will allow Class Members to make informed responses to the proposed settlement.
27 DS ¶¶ 107-119.
28



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1 **XI. PRESENCE OF GOVERNMENTAL PARTICIPANT**

2 As required under Labor Code section 2699(1)(2), Plaintiffs will provide
3 notice of this settlement to the LWDA with the filing and service of this motion.
4 DS ¶ 122, Ex. 20.

5 **XII. CONCLUSION**

6 For the reasons stated above, this Court should grant Plaintiffs' Motion in its
7 entirety and adopt the proposed order submitted concurrently herewith.

8 Respectfully submitted,

9
10 THE SPIVAK LAW FIRM

11 Dated: May 24, 2024

By: /s/ David Spivak

12 DAVID G. SPIVAK, Attorneys
13 for Plaintiffs, JEFFREY PIPICH,
14 EVE STORM, GARY CULL,
15 MELISSA KOLAKOWSKI, and
16 DANIEL LOPEZ, and all others
17 similarly situated
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