

Jonathan M. Genish (State Bar No. 259031)

jgenish@blackstonepc.com

Miriam L. Schimmel (SBN 185089)

mschimmel@blackstonepc.com

Joana Fang (State Bar No. 309623)

jfang@blackstonepc.com

BLACKSTONE LAW, APC

8383 Wilshire Blvd., Suite 745

Beverly Hills, California 90211

Telephone: (310) 622-4278

Attorneys for Plaintiff ALEJANDRO VALDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALEJANDRO VALDEZ, individually and
on behalf of others similarly situated;

Plaintiff,

vs.

C.H.I. AUTOMART, INC., a California
limited liability corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. 21STCV40168

*Assigned to the Hon. Lawrence P. Riff, Dept.
SSC-7*

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: August 25, 2023

Time: 10:00 a.m.

Dept.: SSC-7

Complaint Filed:

November 1, 2021

Trial Date:

Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on August 25, 2023 at 10:00 a.m. in Department 7 of the
3 above-captioned Court located at 312 N. Spring Street, Los Angeles, California 90012, pursuant to
4 California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and
5 California Labor Code section 2699(l), Plaintiff Alejandro Valdez (“Plaintiff”) will and hereby does
6 move the Court for an Order granting preliminary approval of the proposed class action and Labor
7 Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”)
8 settlement between Plaintiff and Defendant C.H.I. Automart, Inc. (“Defendant”).

9 Plaintiff requests that the Court enter an Order:

- 10 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
11 and Release (“Settlement” or “Settlement Agreement”) attached as **Exhibit C** to the Declaration of
12 Jonathan M. Genish in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and
13 PAGA Settlement;
- 14 2. Certifying the Class for Settlement purposes;
- 15 3. Appointing Plaintiff Alejandro Valdez as the Class Representative for Settlement
16 purposes;
- 17 4. Appointing Jonathan M. Genish and Miriam L. Schimmel of Blackstone Law, APC
18 as Class Counsel for Settlement purposes;
- 19 5. Approving the proposed Notice of Class Action Settlement attached as Exhibit 1 to
20 the Settlement Agreement (“Class Notice”) to be mailed to the Class;
- 21 6. Approving the opt-out and objection procedures provided in the Settlement
22 Agreement and set forth in the Class Notice;
- 23 7. Directing Defendant to furnish Class Data to the Settlement Administrator no later
24 than seven (7) calendar days after the Court grants preliminary approval of the Settlement;
- 25 8. Approving the proposed deadlines for the settlement administration process; and
- 26 9. Setting a Final Approval Hearing.

27 Pursuant to California Labor Code section 2699(l)(2), a copy of the proposed Settlement, as
28 well as information regarding the preliminary approval hearing on this matter, were submitted to the

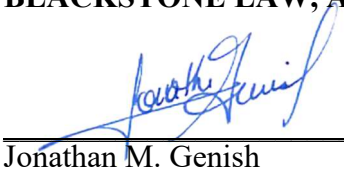
1 California Labor and Workforce Development Agency via online submission concurrently with the
2 filing of this motion. (Genish Decl. ¶ 42).

3 This motion is based upon this notice, the attached memorandum of points and authorities,
4 the Declaration of Jonathan M. Genish in Support of Plaintiff's Motion for Preliminary Approval of
5 Class Action and PAGA Settlement, the Declaration of Alejandro Valdez in Support of Plaintiff's
6 Motion for Preliminary Approval of Class Action and PAGA Settlement, the pleadings and other
7 records on file with the Court in this matter, and any other further evidence or argument that the Court
8 may properly receive at or before the hearing.

9
10 Dated:, June 6, 2023

BLACKSTONE LAW, APC

11
12 By:



Jonathan M. Genish
Miriam L. Schimmel
Joana Fang
Attorneys for Plaintiff Alejandro Valdez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS	4
A.	Class Definition, Class Period and PAGA Period	4
B.	Amount of Settlement	4
C.	Allocation and Funding of the Gross Settlement Payment	4
D.	Plaintiff's Release	6
E.	Release of Class Claims	6
F.	Release of PAGA Claims	7
IV.	STANDARD OF REVIEW FOR PRELIMINARY APPROVAL	7
V.	THE SETTLEMENT IS PRESUMED FAIR	8
A.	The Settlement Was Reached as a Result of Arm's-Length Bargaining	8
B.	Sufficient Investigation and Discovery by Experienced Class Counsel	9
C.	The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions and Recovery Risks	10
1.	Class Counsel's Analysis of the Maximum Realistic Liability and Damages	10
2.	Class Counsel's Risk-Based Analysis and Risk-Based Adjustments	11
VI.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	15
A.	An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable	16
B.	The Class Shares a Well-Defined Community of Interest	16
C.	A Class Action is Superior to a Multiplicity of Litigation	18
VII.	THE REQUESTED ENHANCEMENT AWARD IS REASONABLE	18
VIII.	THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE	19
IX.	THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS	20
X.	CONCLUSION	23

TABLE OF AUTHORITIES

Federal Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D. Cal. 2013).....	16
<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980)	9
<i>Bowles v. Superior Court</i> , 44 Cal. 2d 574 (1995)	18
<i>Castillo v. ADT, LLC</i> , 2017 WL 363108 (E.D. Cal. Jan. 25, 2017).....	16
<i>Cotter v. Lyft, Inc.</i> , 193 F.Supp.3d 1030 (N.D. Cal. 2016)	16
<i>Davis v. Brown Shoe Co.</i> , 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015).....	17
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008)	15
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015).....	20
<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014).....	20
<i>Lusby v. Gamestop Inc.</i> , 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015)	17
<i>Martinov. Ecolab Inc.</i> , No. 3: 14CV04358 (N.D. Cal. 201 7)	17
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982)	9
<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013)	16
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S.Ct. 2541, 2551(2011).....	12
<i>Zamora v. Ryder Integrated Logistics, Inc.</i> , 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014)	17

State Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987).....	19
<i>Bararsani v. Coldwell Banker Residential Brokerage Company, Los Angeles Superior Court Case No. BC495767</i> (2016)	17
<i>Bradley v. Networkers Int’l, LLC</i> , 211 Cal.App.4th 1129 (2012)	12
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);	12
<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018).....	16
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	10
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987).....	18
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967)	18

1	<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	12
2	<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017, 1030 (1972).....	18
3	<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	23
4	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	11
5	<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000).....	21
6	<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	20
7	<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976).....	19
8	<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).	18
9	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	20
10	<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926, 934 (1981).....	18
11	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6, 2017).....	16
12	<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007).....	19
13	<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006)	9
14	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112,1131 (2012).....	16
15	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	9, 10, 11
16	<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021)	16
17	Statutes	
18	29 U.S.C. § 207	3, 7
19	California Business and Professions Code §§ 17200, <i>et seq</i>	3, 7
20	California Civil Code § 3287(a).....	7
21	California Code of Civil Procedure § 1021.5.....	7
22	California Code of Civil Procedure section 382.	17
23	California Code of Civil Procedure section 384	7
24	California Labor Code § 200	7
25	California Labor Code §201.....	2, 3, 7
26	California Labor Code § 201.3.....	7
27	California Labor Code §202.....	2, 3, 7
28		

1	California Labor Code § 203.....	2, 3, 7
2	California Labor Code § 204	7
3	California Labor Code §210.....	7
4	California Labor Code § 218.5.....	7
5	California Labor Code §218.6.....	7
6	California Labor Code §221.....	7
7	California Labor Code § 222.....	7
8	California Labor Code §223.....	7
9	California Labor Code §225.5.....	7
10	California Labor Code §226.....	7
11	California Labor Code §226.3.....	7
12	California Labor Code §226.7,	7
13	California Labor Code §246(i)	7
14	California Labor Code §500.....	7
15	California Labor Code §510	7
16	California Labor Code §512.....	7
17	California Labor Code §554.....	7
18	California Labor Code §558.....	7
19	California Labor Code §1174.....	7
20	California Labor Code §1174.5.....	7
21	California Labor Code §1194.....	7
22	California Labor Code §1194.2.....	7
23	California Labor Code §1194.3.....	7
24	California Labor Code § 1197.....	7
25	California Labor Code §1197.1.....	7
26	California Labor Code § 1198,	7
27	California Labor Code §1199,	7
28	California Labor Code §2800.....	7

1	California Labor Code §2802.....	7
2	Code of Civil Procedure Section 382.....	17
3	IWC Wage Order No. 5.....	3
4	Labor Code § 204.....	2
5	Labor Code § 226(a)	3
6	Labor Code § 226.7	2
7	Labor Code §§ 510.....	2
8	Labor Code § 512(a)	2
9	Labor Code sections 2699 <i>et. seq.</i>	5
10	Other Authorities	
11	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf	12
12		
13	Rules	
14	Cal. Rules of Court, Rule 3.769(c).....	9
15	Cal. Rules of Court, Rule 3.769(g).....	9
16	Regulations	
17	Cal. Code Regs., Title 8 § 11040	3

18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alejandro Valdez (“Plaintiff”) seeks preliminary approval of the Class Action and
4 PAGA Settlement Agreement and Release (“Settlement” or “Settlement Agreement”) entered into by
5 the parties on behalf of all hourly-paid and/or non-exempt employees employed by Defendant C.H.I.
6 Automart, Inc. (“Defendant”) in the State of California from November 1, 2017 to December 8, 2022
7 (the “Class Period”) (Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for
8 Preliminary Approval of Class Action and PAGA Settlement [“Genish Decl.”], ¶¶ 13, 14, Exh. B
9 thereto). The Settlement terms are outlined as follows:

- 10 • Class Size: Approximately 126 individuals.
- 11 • Estimated Total Class Workweeks: 16,141.
- 12 • Aggrieved Employees: 119 individuals.
- 13 • Estimated total PAGA Pay Periods: 3,593.
- 14 • Gross Settlement Payment: Four Hundred Thousand Dollars and Zero Cents
15 (\$400,000.00), exclusive of employer-side payroll taxes.
- 16 • Settlement Administration Costs: Not to exceed Eight Thousand Dollars and Zero
17 Cents (\$8,000.00).
- 18 • Class Representative Service Payment: Not to Exceed Five Thousand Dollars and
19 Zero Cents (\$5,000.00) to Plaintiff Alejandro Valdez.
- 20 • PAGA Penalties: Ten Thousand Dollars and Zero Cents (\$10,000.00), 75% of which,
21 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00), will be paid to the
22 California Labor and Workforce Development Agency (“LWDA”) and the remaining
23 25%, Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) to be paid to
24 the PAGA Members.
- 25 • Requested Attorneys’ Fees and Costs: Attorneys’ fees of One Hundred and Thirty-
26 Three Thousand, Three Hundred and Thirty-Three Dollars and Thirty-Three Cents
27 (\$133,333.33) (one-third of the Gross Settlement Amount) plus actual litigation costs
28 and expenses not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00).

- Estimated Net Settlement Fund: Net Settlement Amount of \$223,666.67 to be distributed to Participating Class Members.
- Average Estimated Individual Settlement Payment, including the 25% of the PAGA Penalties allocated for PAGA Members: \$1,775.13.

As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the Class, approve the proposed Class Notice, and set a hearing date for final settlement approval, among other requested relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant C.H.I. Automart, Inc., a California corporation previously operating under the name Robertson's Palmdale Honda, is an automobile dealership in Palmdale, California. Defendant ceased all operations on or about December 8, 2022.

Plaintiff Alejandro Valdez was employed by Defendant as a Salesperson from approximately February 2020 to approximately April 2021. During his employment, Plaintiff's duties included selling new and used vehicles, providing customer service, taking customers on test drives, making follow-up calls to customers who visited the dealership, and other duties in connection with the sale of vehicles for Defendant. (Declaration of Alejandro Valdez in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ["Valdez Decl."] ¶ 3). On September 29, 2021, Plaintiff provided notice to the LWDA and to Defendant of his intent to seek civil penalties pursuant to the Private Attorneys General Act, Labor Code section 2698, et seq. ("PAGA"). On November 1, 2021, Plaintiff provided an Amended Notice to the LWDA. (Genish Decl., ¶ 9, **Exhibit A and B** thereto). On November 1, 2021, Plaintiff Valdez filed a class action complaint against Defendant in the Los Angeles Superior Court. Plaintiff alleged nine causes of action for: (1) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197, and 1197.1); (5) Failure to Timely Pay Wages Upon Termination (Cal. Lab. Code §§ 201, 202, 203); (6) Failure to Timely Pay Wages

1 During Employment (Cal. Lab. Code §§ 204, 210); (7) Failure to Provide Accurate Itemized Wage
2 Statements (Cal. Lab. Code § 226(a)); (8) Failure to Reimburse Necessary Business Expenses (Cal.
3 Lab. Code §§ 2800, 2802); and (9) Unfair Competition (Cal. Bus. & Prof. Code §§17200, et seq.).
4 On January 20, 2022, Plaintiff amended his complaint to add a PAGA cause of action (Cal. Lab. Code
5 §§ 2698, et seq.). (Genish Decl., ¶ 9.)

6 Very shortly after this matter was filed, the parties met and conferred with respect to the
7 potential resolution of this action and agreed to private mediation. Initially, mediation was set for
8 July 22, 2022, but the parties decided not to proceed with mediation at that time, in part due to
9 Defendant’s position that the majority of employees at issue had signed arbitration agreements that
10 contained class and PAGA waivers, and in part due to the United States Supreme Court’s decision in
11 the *Viking River* case. The parties continued to discuss and debate the merits of the case and ultimately
12 decided to reschedule mediation. Defendant informally produced information, documents and a
13 sampling of employees’ time and payroll records with respect to the alleged Class and PAGA
14 members sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail,*
15 *Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
16 116, 129-130 (“*Dunk/Kullar*”). (Genish Decl., ¶ 10).

17 After a thorough investigation and analysis of the documents and data, the parties attended a
18 private mediation on January 12, 2023, with Marc J. Feder, a neutral and respected mediator with
19 extensive experience in complex wage and hour matters. At the mediation, the parties engaged in
20 intensive settlement discussions during which they debated their respective positions and exchanged
21 views regarding the strengths and weaknesses of the alleged claims. After a full day of mediation,
22 and with the help of the mediator, the parties were able to reach an agreement to resolve this dispute
23 on a class and representative basis. Thereafter, the parties spent several weeks negotiating a
24 memorandum of understanding (“MOU”) memorializing the key settlement terms. After further
25 negotiation, an agreed-upon MOU was executed by the parties as of February 12, 2023. The parties
26 then spent many hours drafting and revising the terms into a long form settlement agreement.
27 (Genish Decl., ¶ 11).

28 After additional discussions and revisions to the agreement, the Settlement Agreement was

1 fully executed as of April 26, 2023. (Genish Decl., ¶ 12, Exh. B).

2 Now, following the parties' substantial investigation and extensive settlement negotiations,
3 Plaintiff seeks preliminary approval of the proposed settlement, which will resolve all class and
4 representative claims alleged in the Complaint.

5 In accordance with Labor Code sections 2699 *et. seq.*, and concurrently with the filing of this
6 motion, Plaintiffs' counsel provided notice of the proposed settlement to the LWDA. (Genish Decl.,
7 ¶ 42, **Exhibit D**).

8 **III. THE SETTLEMENT TERMS**

9 **A. Class Definition, Class Period and PAGA Period**

10 For purposes of settlement only, the Parties have agreed that the Class shall be defined as "all
11 current and former non-exempt or hourly paid employees of Defendant that have worked for
12 Defendant in the State of California during the Class Period" ("Class Members" or "Class"). The
13 Class Period and release of claims begins on November 1, 2017, and ends on December 8, 2022.
14 (Settlement Agreement, ¶ 1.12). It is estimated that there are 126 Class Members. (Genish Decl., ¶
15 13; Settlement Agreement, ¶ 4.1). The PAGA Period begins on September 29, 2020 and ends on
16 December 8, 2022 and includes "all current and former non-exempt or hourly paid employees of
17 Defendant that have worked for Defendant in the State of California during the PAGA Period
18 ("Aggrieved Employees"). (Genish Decl., ¶ 14; Settlement Agreement, ¶¶ 1.4.) It is estimated that
19 there are 119 Aggrieved Employees. (Genish Decl., ¶ 14; Settlement Agreement, ¶ 4.1).

20 **B. Amount of Settlement**

21 The parties have agreed to settle the Class and PAGA claims at issue in the Complaint for a
22 non-reversionary Gross Settlement Payment of Four Hundred Thousand Dollars and Zero Cents
23 (\$400,000.00), exclusive of any employer-side payroll taxes. (Genish Decl., ¶ 15; Settlement
24 Agreement ¶ 3.1).

25 **C. Allocation and Funding of the Gross Settlement Payment**

26 The Gross Settlement Payment is a common fund and therefore includes all requested costs,
27 fees, and other allocations. As stated above, the Gross Settlement Payment includes: (1) Class
28 Counsel's fees in the amount of one-third of the Gross Settlement Payment, equaling One Hundred

1 Thirty-Three Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33);
2 (2) Class Counsel's actual litigation costs, not to exceed Twenty Thousand Dollars and Zero Cents
3 (\$20,000.00); (3) Settlement Administration Costs, capped at Eight Thousand Dollars and Zero Cents
4 (\$8,000.00); (4) Class Representative Service Payment in the amount of Five Thousand Dollars and
5 Zero Cents (\$5,000.00) to Plaintiff; and (5) PAGA Penalties of Ten Thousand Dollars and Zero Cents
6 (\$10,000.00). After the above-estimated amounts are deducted from the Gross Settlement Payment,
7 approximately 126 Class Members will share in a Net Settlement Fund of approximately Two
8 Hundred and Twenty-Three Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents
9 (\$223,666.67) (Genish Decl., ¶ 15; Settlement Agreement, ¶ 3.2, et seq.).

10 The Net Settlement Fund will be distributed and paid to Participating Class Members on a
11 pro-rata basis based on the number of workweeks worked during the Class Period. This will provide
12 Participating Class Members with an average estimated payment of \$1,775.13. (Genish Decl., ¶ 16).
13 The actual payments to Participating Class Members will vary based on the actual weeks worked by
14 Participating Class Members and shall be confirmed by the Settlement Administrator in advance of
15 the final approval hearing. Employees who worked during the PAGA Period shall also receive a
16 share of the 25% portion of the PAGA Penalties designated for distribution to PAGA Members.
17 These payments will be distributed on a pro-rata basis based on the number of workweeks worked
18 during the PAGA Period. Payments to Participating Class Members will be allocated as 20% wages
19 and 80% interest and penalties. The employee share of any applicable payroll taxes on wages will
20 be deducted from the wage portion of each Participating Class Member's Individual Settlement
21 Payment. Employer-side payroll taxes shall be paid by Defendant separately from and in addition to
22 the Gross Settlement Payment. (Genish Decl., ¶ 16; Settlement Agreement ¶ 3.2.4.1).

23 The Settlement Agreement is a non-reversionary and a non-claims made settlement. All
24 money from the Net Settlement Fund will be distributed to Participating Class Members. No money
25 will revert to Defendant. (Genish Decl., ¶ 17; Settlement Agreement ¶ 3.1).

26 Any Individual Settlement Payment checks remaining uncashed after 180 days will be
27 transferred to the California State Controller's Office and held in a trust for such Participating Class
28 Members and PAGA Members. As such, no "unpaid residue" under California Code of Civil

1 Procedure section 384 will result from the Settlement. (Genish Decl., ¶ 18; Settlement Agreement ¶
2 4.4.3).

3 **D. Plaintiff's Release**

4 In exchange for participating in the Settlement, Plaintiff and his respective former and present
5 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally,
6 release and discharge Released Parties from all claims, transactions, or occurrences that occurred
7 during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could
8 have been, alleged, based on the facts contained, in the Operative Complaint, including, but not
9 limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide Meal
10 Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab. Code §
11 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and 1197.1); (5) Failure
12 to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203); (6) Failure to Pay
13 Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure to Provide Accurate
14 Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure to Reimburse Business
15 Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in Violation of Business &
16 Professions Code Section 17200; and (10) all claims under California's Private Attorneys General
17 Act of 2004 (Cal. Lab. Code §§ 2699 et seq.) and (b) all PAGA claims that were, or reasonably could
18 have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or
19 ascertained during the Action and released under section 6.3 of the Settlement Agreement.
20 (Settlement Agreement ¶ 6.1.)

21 In addition, Plaintiff shall expressly waive and relinquish all rights of California Civil Code
22 § 1542. (Settlement Agreement ¶ 6.1.1.)

23 **E. Release of Class Claims**

24 All Participating Class Members shall, on behalf of themselves and their respective former
25 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
26 Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based
27 on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action
28 including, but not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure

1 to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods
2 (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and
3 1197.1); (5) Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203);
4 (6) Failure to Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure
5 to Provide Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure
6 to Reimburse Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in
7 Violation of Business & Professions Code Section 17200; and (10) all claims under California's
8 Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.). (Settlement Agreement ¶
9 6.2).

10 **F. Release of PAGA Claims**

11 All Non-Participating Class Members who are Aggrieved Employees are deemed to release,
12 on behalf of themselves and their respective former and present representatives, agents, attorneys,
13 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
14 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts
15 stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action
16 including, but not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure
17 to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods
18 (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and
19 1197.1); (5) Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203);
20 (6) Failure to Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure
21 to Provide Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure
22 to Reimburse Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in
23 Violation of Business & Professions Code Section 17200; and (10) all claims under California's
24 Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.). (Settlement Agreement ¶
25 6.3).

26 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

27 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal.
28 App. 4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether

1 notice to the class was adequate, whether certification of the class was proper, and whether the
2 attorney fee award was proper are matters addressed to the trial court’s broad discretion.” *Wershba*
3 *v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

4 The review and approval of a proposed class action settlement involves a two-step process.
5 See Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement
6 and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently
7 within the range of a fair settlement to justify providing notice of the proposed settlement to class
8 members. After notice is provided to the class, the Court must conduct a second inquiry into whether
9 the proposed settlement is fair, reasonable, and adequate. *Id.*

10 The initial evaluation of the settlement at the preliminary approval step “is not a fairness
11 hearing.” *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir.
12 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only
13 whether the proposed settlement is within the range of possible approval and, as a result, “whether
14 there is any reason to notify the class members of the proposed settlement and to proceed with a
15 fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s
16 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
17 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
18 small. See *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

19 Preliminary approval does not require a court to make a final determination that the settlement
20 is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after
21 notice of the settlement has been given to the class members and they have had an opportunity to
22 object or exclude themselves from the settlement. See Cal. Rules of Court, Rule 3.769(g). In
23 considering a potential class settlement, the court need not reach any ultimate conclusions on the
24 issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the
25 merits. See *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

26 **V. THE SETTLEMENT IS PRESUMED FAIR**

27 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

28 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is

1 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
2 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the parties’ settlement negotiations
3 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 22). The Settlement
4 was reached following a full day of mediation by all parties and the assistance of a highly respected
5 mediator with substantial experience mediating wage and hour cases. (Genish Decl., ¶ 11). Moreover,
6 Plaintiff engaged in additional negotiations to finalize the long-form agreement presently before the
7 Court. At all times, Plaintiff was willing and prepared to litigate this matter through class certification
8 and trial if the parties had been unable to reach a favorable resolution. (Genish Decl., ¶¶ 11, 22).

9 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

10 Courts typically assess the status of discovery in determining whether a class action settlement
11 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. In preparation for
12 mediation, on January 12, 2023, Plaintiff Valdez initially provided Defendant with a detailed list of
13 documents and data needed for mediation of this action. Defendant provided key data points including
14 the start date of its operations in California, the total number of employees during the relevant time
15 period, total number of workweeks, and number of meal and rest period premiums paid. Defendant
16 also provided its Employee Handbooks. In sum, through informal discovery, Plaintiff obtained time
17 and payroll data for Plaintiff and a sample of the putative class and key data points including the class
18 size and composition, the number of workweeks worked, the number of locations, average rate of
19 pay, and the number of terminated employees – all of which enabled Plaintiff to assess the nature and
20 extent of Defendant’s potential liability and damages. (Genish Decl., ¶ 22).

21 The parties extensively briefed issues regarding class certification and liability and provided
22 their analyses to the mediator who helped the parties debate the strengths and weakness of their
23 respective positions. (Genish Decl., ¶ 23). Additionally, settlement negotiations were conducted by
24 highly capable and experienced counsel. Class Counsel are respected members of the California State
25 Bar with strong records of vigorous and effective advocacy and are experienced in handling complex
26 wage and hour class action litigation. (Genish Decl., ¶¶ 2-8, 22; Schimmel Decl., ¶¶ 4-11).
27 Accordingly, Class Counsel had sufficient information and experience to act intelligently in
28 negotiating the Settlement.

1 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal**
2 **Positions and Recovery Risks**

3 A settlement is not judged against what might have been recovered had a plaintiff prevailed
4 at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
5 *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court
6 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
7 further litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
9 views of counsel, the presence of a governmental participant, and the reaction of the class members
10 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

11 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal
12 and factual grounds for defending the action. Most significantly, Defendant produced arbitration
13 agreements signed by each and every putative class member. The agreements contained a waiver of
14 class, collective and representative actions. Plaintiff disputed the validity or enforceability of the
15 agreements and the PAGA action waiver. However, based on Class Counsel’s experience litigating
16 similar matters, Plaintiff reasonably expected a vigorous and lengthy battle regarding the agreements
17 and the underlying merits of the action absent a settlement. (Genish Decl., ¶¶ 2-8).

18 **1. Class Counsel’s Analysis of the Maximum Realistic Liability and**
19 **Damages**

20 Prior to mediation, Class Counsel analyzed a sampling of time and payroll records provided
21 by Defendant and other relevant documents and discovery. Based on the discovery provided, Class
22 Counsel estimated with respect to the class claims, with all claims adjudicated in favor of the Class,
23 that Defendant faced a maximum potential liability of \$3,675,931. This estimate is based off an
24 estimated maximum potential liability for each of the alleged claims as follows: \$1,024,857 for meal
25 period violations; \$1,905,442 for rest period violations, \$127,634 for unpaid wages (off the clock),
26 \$89,392 for unpaid overtime wages (improper regular rate of pay), \$189,356 for waiting time
27 penalties for 47 terminated employees and \$339,250 in wage statement penalties. Plaintiff further
28 estimated that Defendant faced an additional exposure of \$358,600 in potential *unstacked* PAGA

1 penalties. (Genish Decl., ¶ 24).

2 **2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments**

3 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
4 recovery existed. Defendant denied and continues to deny any liability and wrongdoing of any kind
5 associated with the claims alleged in this action, and further denies that class certification is
6 appropriate for any purpose other than this Settlement. Defendant believes that it would ultimately
7 prevail in this action, proffering defenses to both certification and to the merits of Plaintiff’s claims,
8 and that it would have successfully moved to compel arbitration of Plaintiff’s individual claims and
9 dismissal of the class claims. While Plaintiff and Class Counsel disagree with Defendant’s
10 predictions, they also recognize that there is a significant risk that Defendant would succeed in
11 enforcing the arbitration agreements and/or the Court may deny class certification. (Genish Decl., ¶¶
12 26-27); *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at
13 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
14 actions were certified either as part of a settlement or as part of a contested certification motion).

15 For example, Plaintiff believes a large portion of Defendant’s overall potential liability lies in
16 Plaintiff’s meal period claims. These claims have been increasingly difficult to certify in recent years
17 and Defendant contended its practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Plaintiff’s
18 theory of liability for meal period violations was based on allegations that Defendant had failed to
19 implement lawful practices that allowed Class Members to take meal breaks in the manner required
20 under California law. *See Bradley v. Networkers Int’l, LLC*, 211 Cal.App.4th 1129 (2012) (holding
21 that “the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of
22 common proof.”). Specifically, Plaintiff asserts that Defendant did not provide him and others with
23 the opportunity to take timely, uninterrupted 30-minute meal periods when they worked shifts of five
24 hours or more, or take a second lawful meal break on shifts that exceeded 10 hours. Further, Plaintiff
25 alleged that Defendant instructed him and others to clock out for their meal periods, but continue
26 working through them. And even when meal periods were taken, Plaintiff and others were frequently
27 interrupted and asked to return to work to assist a customer. Plaintiff further alleged that Defendant
28 did not have a policy or practice to pay meal period premiums for all noncompliant meal periods.

1 (Genish Decl., ¶ 28).

2 In contrast, Defendant argued that its written meal break policy and its practices at all times
3 during the class period were lawful. Defendant argued that the rate of purported meal period
4 violations reflected in the data would require individualized inquiry and that such inquiry would
5 prohibit a class from being certified. Class Counsel disagreed with this assessment but had to
6 consider the risk that the Court would find validity in an individualized proof defense to certification
7 of Plaintiff's meal period claim. (Genish Decl., ¶ 28).

8 Plaintiff's rest period allegations were based on a similar lack of lawful practice and failure
9 to provide employees with timely, full, and uninterrupted rest periods due to the excessive demands
10 during employees' shifts. Plaintiff further alleged that Defendant's written rest break policy violated
11 California law by requiring employees to remain on the premises during rest breaks. Plaintiff also
12 contended that Defendant lacked any policy or practice to compensate employees who were not
13 permitted to take lawful rest periods. As with the meal period allegations, Defendant contended that
14 it did provide rest breaks and relieve Class Members of all duties as required under California law.
15 This claim, however, was even more uncertain given the difficulties associated with proving the
16 alleged rest period violations, as Defendant was not required to record these breaks. Given the lack
17 of records demonstrating rest period violations, there were legitimate concerns Plaintiff would not be
18 able to certify these claims or prove substantial damages with requisite certainty. (Genish Decl., ¶
19 29).

20 Plaintiff also faced challenges certifying and proving liability for their minimum wage and
21 overtime claims. These claims were largely based on unrecorded, off-the-clock work performed by
22 the Class Members both before and after their shifts, as well as during meal breaks. As such, the
23 individualized nature of the damages presented substantial concerns regarding the manageability of
24 the case and the risk the Court could find these issues prevented certification. (Genish Decl., ¶ 30).

25 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving
26 the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
27 proposition. In order to prove liability and damages, Class Counsel will need to obtain and analyze
28 thousands more pages of documents, as well as obtain the Class Members' contact information and

1 contact each of them and obtain their declarations at great expense. Moreover, even if Plaintiff
2 prevailed against Defendant's arbitration agreements and succeeded on class certification and trial,
3 likely appeals would substantially delay any recovery to the Class. (Genish Decl., ¶ 31).

4 Both sides have had the opportunity to review documents and information relating to
5 Plaintiff's and the Settlement Class Members' employment with Defendant, and Defendant's
6 operations and employment policies, practices, and procedures. The Parties also reviewed and
7 analyzed a sampling of the time and pay data of the Settlement Class Members to determine the
8 potential value and strength of the claims. The available information enabled Class Counsel to
9 estimate the potential claims of the Settlement Class and prepare damages/valuation models.
10 Accordingly, the Parties have conducted adequate investigation and discovery to be sufficiently
11 informed of the nature and extent of the Settlement Class Members' claims, and to enable both sides
12 to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. The Parties have
13 agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's
14 principal claims, as well as the costs and risks to both sides that would attend further litigation. The
15 Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty
16 of how the case might have concluded at trial, and/or after exhaustion of all appeals. (Genish Decl.,
17 ¶ 32).

18 Therefore, taking into account the risk that Defendant's arbitration agreements would be
19 enforced, and the subsequent risk of not obtaining class certification, Class Counsel discounted
20 Defendant's estimated liability by 75% (reducing the damages to \$918,982.75). The merits-based risk
21 factors also reduced Defendant's estimated liability by an additional 50%. This resulted in an adjusted
22 estimated liability of \$459,491.38. (Genish Decl., ¶ 33).

23 Class Counsel also separately contemplated the risks of proceeding with the PAGA action
24 and potential liability Defendant could face from this claim. First, Class Counsel recognized that the
25 PAGA claims would be subject to the same defenses and risks as Plaintiff's underlying wage claims.
26 (Genish Decl., ¶¶ 26-33); *see, Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.
27 Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because
28 Plaintiff's other claims fail as a matter of law, so does her PAGA claim"). Moreover, although

1 California case law clearly states that PAGA actions need not satisfy class action requirements, Class
2 Counsel remained mindful of the fact that some courts have nevertheless held that PAGA claims must
3 meet a threshold “manageability” requirement. *See, e.g., Wesson v. Staples the Office Superstore,*
4 *LLC*, 68 Cal.App.5th 746 (2021). Class Counsel also anticipated that even if successful on the merits
5 at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations
6 could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue
7 that it made a good faith attempt to comply with its legal obligations warranting a reduction in
8 penalties.¹ Class Counsel also anticipate Defendant would argue that it made a good faith attempt to
9 comply with its legal obligations, and that the violations per pay period were low, warranting an
10 additional reduction in civil penalties. Finally, Class Counsel was also mindful of the fact that PAGA
11 is fundamentally not intended to be compensatory in nature but is instead intended to facilitate
12 enforcement of California’s labor laws by financing state activities and educating and deterring non-
13 compliance. (Genish Decl., ¶ 33, 35).

14 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded
15 that it was in the best interest of the State of California and the Aggrieved Employees to enter into
16 the Settlement, and the parties agreed to allocate Ten Thousand Dollars (\$10,000.00) of the
17 Settlement towards the PAGA claims, which represents approximately 2.5% of the Gross Settlement
18 Payment. (Genish Decl., ¶ 34). This percentage of the settlement is well-within the range of wage
19 and hour settlements regularly approved in both state and federal court for cases that include both a
20

21 ¹ *See, e.g., Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012)
22 (imposition of both statutory and civil penalties for same conduct is impermissible double recovery)
23 (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal.
24 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”); *Smith*
25 *v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
26 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal.
27 Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super.
28 Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien,*
Inc., 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%);
Cotter v. Lyft, Inc., 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30
Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay
period based on good faith attempts to comply with obligations and minimal violations).

1 class and PAGA action. Typically, such hybrid cases allocate only 1% of the gross settlement value
2 to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement
3 amount have been approved as reasonable by courts. *See, e.g., Bararsani v. Coldwell Banker*
4 *Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016) (\$10,000
5 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Davis v. Brown Shoe Co.*,
6 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class
7 settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA Payment
8 of \$5,000 in a \$500,000 class settlement); *Martinov. Ecolab Inc.*, No. 3: 14CV04358 (N.D. Cal. 201
9 7) (\$100,000 allotted as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *Zamora v.*
10 *Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment
11 to LWDA for PAGA on a \$1.5 million class settlement). (Genish Decl., ¶ 34). Moreover, the overall
12 relief obtained by the Settlement is significant, not only from a monetary perspective, but also because
13 it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws,
14 provide funds to the state, and deter future non-compliance by the employer.

15 In light of the parties’ respective legal positions and the risks of continued litigation, the Gross
16 Settlement Payment for resolution of the class and PAGA claims, is fair, adequate, and reasonable.
17 (Genish Decl., ¶ 36).

18 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

19 Code of Civil Procedure Section 382 provides that three basic requirements must be met in
20 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-
21 defined community of interest in the question of law or fact affecting the parties to be represented;
22 and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a
23 class action is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that
24 this action, which is based upon Defendant’s wage and hour policies and practices, satisfies the class
25 certification requirements under California Code of Civil Procedure section 382. Defendant denies
26 Plaintiff’s allegations and contends that this action and/or class is not certifiable, but for purposes of
27 this Settlement only, Defendant has stipulated to certification of the proposed class action while
28 reserving all right and defenses in the event that the Settlement is not approved.

1 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All**
2 **Members is Impracticable**

3 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the
4 size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148
5 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification.
6 Here, the Class is defined as “all current and former non-exempt or hourly paid employees of
7 Defendant that have worked for Defendant in the State of California during the Class Period.” (“Class
8 Members” or “Class”). (Genish Decl., ¶ 13; Settlement Agreement, ¶ 1.5). This provides a clear and
9 definite scope for the proposed class.

10 Next, the class is sufficiently numerous. There is no magic number that satisfies the
11 numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class
12 members. *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44
13 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated
14 Class size of 126 individuals meets the numerosity requirement. (Genish Decl., ¶ 13).

15 Finally, the question of whether class members are easily identifiable turns on whether a
16 plaintiff can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d
17 695 at 706 (1967). The existence of an ascertainable class in this case can be established through
18 Defendant’s payroll records, and the class definition is sufficiently specific to enable the parties,
19 potential Class Members and the Court to determine the parameters of the Class. *See Clothesrigger,*
20 *Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987).

21 **B. The Class Shares a Well-Defined Community of Interest**

22 The community of interest requirement embodies three factors: (1) predominant questions of
23 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
24 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Here, all three
25 requirements are easily satisfied.

26 The commonality criterion requires the existence of common question of law or fact and is
27 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.
28 What is required is that a common question of fact or law exist which predominates over issues unique

1 to individual plaintiffs. The existence of individual issues or facts—generally present in any case
2 arising from employment—is not a bar to class certification as long as they do not render class
3 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*
4 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

5 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant
6 class certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to
7 employees, required employees to perform work off-the-clock, failed to fully compensate employees
8 for all time actually worked. These policies and practices meant that Defendant allegedly failed to
9 pay minimum and overtime wages, and other related claims. Plaintiff alleges that Defendant’s
10 policies and practices were uniform as to all Class Members. Thus, class treatment is appropriate.

11 To satisfy the typicality requirement, California law does not require that Plaintiff’s claims
12 be identical to the other class members. Rather, the test of typicality for a class representative is
13 whether other members have the same or similar injury, whether the action is based on conduct which
14 is not unique to the named plaintiff, and whether other class members have been injured by the same
15 course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality
16 requirement for a class representative refers to the nature of the claim or defense of the representative,
17 and not to the specific facts from which it arose or the relief sought. *See id.*

18 Here, Plaintiff alleges that their claims are similar to that of the other Class Members and that
19 Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other
20 Class Members. Because Plaintiff’s claims are based upon the same alleged conduct and business
21 practices as those of Class Members, the typicality requirement has been satisfied.

22 Finally, the question of adequacy of representation “depends on whether the plaintiff’s
23 attorney qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to
24 the interests of the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these
25 considerations are satisfied. Class Counsel are well-regarded and accomplished lawyers who are
26 qualified and experienced in employment-related, class-action litigation. (Genish Decl., ¶¶ 2-8,
27 Schimmel Decl., ¶¶ 4-11). Plaintiff will vigorously, adequately and fairly represent the interests of
28 the class. Plaintiff has, at all times throughout the course of the litigation, considered the interests of

1 the Class and understood that he must take steps to adequately represent the class and their interests.
2 (Valdez Decl. ¶¶ 3-7). Because Plaintiff’s claims are typical of other Class Members and are not
3 based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

4 **C. A Class Action is Superior to a Multiplicity of Litigation**

5 Under the circumstances, proceeding as a class action is a superior means of resolving this
6 dispute, as the class members and the court will derive substantial benefits. Class certification would
7 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
8 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
9 come forward to prove his or her separate claim and whether the class approach would actually serve
10 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
11 operative facts would unduly burden the courts and could result in inconsistent results. Therefore,
12 class action proceedings are superior to individual litigation.

13 **VII. THE REQUESTED ENHANCEMENT AWARD IS REASONABLE**

14 Plaintiffs in class action lawsuits are eligible for reasonable enhancement awards as
15 compensation “for the expense or risk they have incurred in conferring a benefit on other members
16 of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts
17 routinely grant approval of class action settlement agreements containing enhancements for the class
18 representative, which are necessary to provide incentive to represent the class and are appropriate
19 given the benefit the class representatives help to bring about for the class. *See In re Online DVD*
20 *Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving enhancement award 417 times larger than
21 individual payments where enhancement award made up a mere .17% of the settlement); *Gaudin v.*
22 *Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service
23 award of \$15,000 to be “fair and reasonable”).

24 Plaintiff initiated his lawsuit on behalf of his former co-workers who will now be entitled to
25 receive payment from the Settlement. Plaintiff invested substantial time and effort into this litigation
26 including conducting his own research, reviewing relevant documents, contacting other putative class
27 members to obtain their participation in the action, and engaging in extensive discussions with Class
28 Counsel. (Valdez Decl. ¶¶ 3-7). Further, the amount requested by Plaintiff is also reasonable given

1 the average award and the benefit gained by other Class Members. For these reasons, Plaintiff
2 requests that a class representative service payment of \$5,000.00 be preliminarily approved by the
3 Court. (Genish Decl., ¶ 37; Valdez Decl., ¶ 9).

4 **VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

5 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
6 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal,*
7 *Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be
8 equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
9 incurred. *Id.* at 47. In cases where class members present claims against a common fund and the
10 defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method
11 is appropriate. *Id.* at 32.

12 Here, the requested attorneys’ fees of One Hundred Thirty-Three Thousand, Three Hundred
13 Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33), which is one-third of the common fund,
14 are disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. 1). The
15 requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by
16 Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided
17 and will also support Class Counsel’s request for the reimbursement of litigation costs not to exceed
18 \$20,000.00. (Genish Decl., ¶ 38). All costs and fees that are not ultimately approved by the Court
19 shall instead be included in the Net Settlement Fund and distributed to Participating Class Members.
20 (Settlement Agreement, ¶ 3.2.2).

21 The effectiveness of Blackstone Law, APC’s prosecution of this matter has translated into
22 tangible monetary benefits for the Settlement Class Members as follows: (1) Settlement Class
23 Members will obtain monetary recovery over a relatively short period of time, as opposed to waiting
24 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares
25 favorably with other similar class action settlements of this type, given the strengths and weaknesses
26 of the case; and (3) significant savings in Class Counsel’s fees and/or costs that would have only
27 increased significantly had the case progress through trial and/or appeals. (Genish Decl., ¶ 39).
28 Further, Class Counsel have litigated this matter for close to a year and were actively preparing this

1 matter for class certification and trial. The Motion for Final Approval will elaborate on the nature of
2 the legal services provided, the time incurred in performing those services, and Class Counsel's
3 hourly rates. The Motion for Final Approval will also elaborate on the reimbursement costs sought
4 by Class Counsel. Notice of the requested award of fees and costs is included in the Notice to the
5 Class. (Genish Decl., ¶ 40).

6 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS**
7 **DUE PROCESS REQUIREMENTS**

8 No later than seven (7) calendar days after the Court grants preliminary approval of the
9 Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft
10 Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the
11 Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other
12 purpose, and restricts access to the Class Data to Administrator employees who need access to the
13 Class Data to effect and perform under the Settlement Agreement. Defendant has a continuing duty
14 to immediately notify Class Counsel if it discovers that the Class Data omitted class member
15 identifying information and to provide corrected or updated Class Data as soon as reasonably feasible.
16 Using best efforts to perform as soon as possible, the Parties and their counsel will expeditiously use
17 best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
18 Class Data. (Settlement Agreement, ¶ 4.2).

19 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary
20 to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later
21 than thirty (30) calendar days after the Effective Date defined as the date by when both of the
22 following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the
23 Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following
24 occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters
25 Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the
26 deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is
27 filed, the day after the appellate court affirms the Judgment and issues a remittitur. (Settlement
28

1 Agreement, ¶¶ 1.18, 4.3).

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

5 The parties have jointly drafted a Class Notice which will be delivered to the Class Members.
6 (Settlement Agreement, Exh. 1). The Class Notice is being provided in English only which is
7 sufficient. Class Members speak and read English because it is necessary in order for them to be able
8 to perform their job duties. Using best efforts to perform as soon as possible, and in no event later
9 than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all
10 Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”)
11 mail, the Class Notice substantially in the form attached to this Motion. The first page of the Class
12 Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or
13 Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA
14 Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the
15 Administrator shall update Class Member addresses using the National Change of Address database.
16 (Settlement Agreement, ¶ 8.4.2).

17 Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the
18 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
19 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment,
20 the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.
21 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment
22 and the Class Representative Service Payments shall not precede disbursement of Individual Class
23 Payments and Individual PAGA Payments. (Settlement Agreement, ¶ 4.4).

24 In determining whether to approve a settlement of a class action, a trial court has virtually
25 complete discretion as to the manner of giving notice to class members, and review on appeal is
26 governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186
27 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing
28 notice to the Class which would result in a higher likelihood of actual notice. The original source of

1 the mailing addresses is from Class Members, who provided the information to Defendant. (Genish
2 Decl., ¶ 41). Not later than three (3) business days after the Administrator's receipt of any Class
3 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using
4 any forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
5 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the
6 most current address obtained. The Administrator has no obligation to make further attempts to locate
7 or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
8 (Settlement Agreement, ¶ 8.4.3).

9 Any Class Members who wish to object to the approval of this Settlement may do so by fax,
10 email, or mail. (Settlement Agreement, ¶ 8.7.2). Written objections must be mailed to the Settlement
11 Administrator no later than sixty (60) calendar days following the initial mailing of the Class Notice
12 (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed.
13 (Settlement Agreement, ¶ 8.7.2). In the alternative, Class Members may also appear, or hire an
14 attorney to appear in Court, and object at the Final Approval Hearing. (*Id.*).

15 Class Members who wish to exclude themselves (opt out of) the Class Settlement must send
16 the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than sixty
17 (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14)
18 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from
19 a Class Member or his/her representative that reasonably communicates the Class Member's election
20 to be excluded from the Settlement and includes the Class Member's name, address and email address
21 or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or
22 postmarked by the Response Deadline. (Settlement Agreement, ¶ 8.5.1).

23 Notice to the Class is the best practicable notice of this Settlement, and it complies with all of
24 the applicable requirements for approval. (Genish Decl., ¶¶ 40-41).

25 ///

26 ///

27 ///

28 ///

1 **X. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
3 Motion for Preliminary Approval and the relief requested herein.

4 Respectfully submitted,

5 Dated: June 6, 2023

BLACKSTONE LAW, APC

7
8 By:



Jonathan M. Genish
Miriam L. Schimmel
Joana Fang
Attorneys for Plaintiff Alejandro Valdez

PROOF OF SERVICE

Alejandro Valdez v. C.H.I. Automart, Inc. – Case No. 21STCV40168

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Yesenia Rosas, certify and declare as follows:

I am over eighteen years of age and not a party to the within action; my business address is 8383 Wilshire Blvd, Suite 745, Beverly Hills, California 90211. On June 6, 2023, I served a copy of the following document(s):

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested parties as follows:

Nicole Kamm Joel Moon FISHER & PHILLIPS LLP 21600 Oxnard Street, Suite 650 Woodland Hills, California 91367 Telephone: (818) 230-4250 / Fax: (818) 230-4251 E-mails: nkamm@fisherphillips.com jmoon@fisherphillips.com nmartinez@fisherphillips.com <i>Attorneys for Defendant C.H.I. Automart, Inc.</i>	Cynthia Elkins (SBN 125606) celkins@employer-law.com ELKINS EMPLOYMENT LAW 21860 Burbank Blvd. Suite 360 North Building Woodland Hills, Ca 91367 Telephone: (818) 598-6771 / Fax: (818) 598-6779 <i>Attorneys for Defendant C.H.I. Automart, Inc.</i>
---	--

☒ **BY ELECTRONIC SERVICE (CASE ANYWHERE):** I caused said document(s) to be sent to the addressee(s) listed above via Case Anywhere. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **STATE –** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 6, 2023 at Beverly Hills, California.


Yesenia Rosas