

James R. Hawkins (SBN 192925)
james@Jameshawkinsaplc.com
Christina M. Lucio (SBN 253677)
christina@Jameshawkinsaplc.com
Mitchell J. Murray (SBN 285691)
mitchell@Jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiffs PRISCILLA AGUILAR, JULIAN HARO, JUAN MADERA, and
RICHARD NUNEZ on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PRISCILLA AGUILAR, JULIAN HARO,
JUAN MADERA, and RICHARD NUNEZ, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

OWENS-BROCKWAY GLASS CONTAINER,
INC., a Delaware Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. 21STCV33017

Assigned for All Purposes:
Hon. Yvette M. Palazuelos

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

Hearing Information

Date: August 24, 2023
Time: 10:00 a.m.
Dept: 9

Complaint Filed: September 8, 2021
Trial Date: None set

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1 **I. INTRODUCTION**

2 Plaintiffs Priscilla Aguilar, Julian Haro, Juan Madera, and Richard Nunez (“Plaintiffs”) seek
3 preliminary approval of a \$3,700,000 proposed putative class and representative action settlement
4 (the “Settlement”) entered with Defendant Owens-Brockway Glass Container, Inc. (“Defendant”).
5 The Settlement, if approved, will provide a significant monetary recovery to the approximately 1,050
6 Class Members. The Settlement resulted after a full-day mediation conducted by an experienced
7 wage and hour mediator. The proposed Settlement satisfies all of the criteria for preliminary approval
8 under California law. The Settlement falls well within the range of possible approval because it
9 provides reasonable, fair, and adequate relief to the class members taking into consideration the risks
10 and expenses of further litigation, and it was the result of non-collusive, arm’s length, contentious,
11 and informed negotiations between the parties, who were represented by experienced wage and hour
12 class action counsel.

13 Plaintiffs request an order preliminarily approving the Settlement Agreement as fair,
14 adequate, and reasonable; provisionally certifying the Class; approving Plaintiffs’ counsel as Class
15 Counsel; approving the form, content, and manner of the settlement notice and directing distribution
16 of the settlement notice to the Class; setting a schedule for proceedings with respect to final approval
17 of the Settlement Agreement; and staying the action, other than such proceedings as are related to
18 this Settlement Agreement.

19 **II. BACKGROUND**

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

21 In September 2021, Plaintiffs submitted a letter to the California Labor Workforce
22 Development Agency (“LWDA”) alleging that they, and similarly-situated hourly and non-exempt
23 workers employed by Defendant, were denied minimum and overtime wages, were denied pay for
24 rest and meal periods, were denied duty-free meal and rest breaks, were not reimbursed for business
25 expenses, were not provided accurate wage statements, and were not timely paid all wages owed.
26 Plaintiffs further alleged that Defendant failed to maintain accurate time and pay records.
27 (Declaration of James R. Hawkins in Support of Plaintiff’s Motion for Preliminary Approval
28 (“Hawkins Decl.”) ¶ 10).

1 On September 8, 2021, Plaintiffs filed a putative wage-and-hour class action lawsuit against
2 Defendant (the “ Class Complaint”). The Class Complaint alleges causes of action for: (1) failure to
3 pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to
4 authorize and permit rest breaks; (5) failure to timely pay wages owed upon separation from
5 employment; (6) failure to furnish accurate itemized wage statements; (7) violation of the unfair
6 competition law; and (8) failure to reimburse necessary expenses. (Hawkins Decl. ¶ 11).

7 Defendant filed an Answer to Plaintiff’s Complaint on December 2, 2021, generally and
8 specifically denying the allegations contained therein, and denying that they have, in whole or in
9 part, any liability to Plaintiffs; denying that a class is appropriate; denying that a class action is
10 appropriate; and denying that they have, in whole or in part, any liability to any other persons in the
11 alleged putative class. (Id., ¶ 12). Thereafter, Defendant filed a Notice of Removal to the Central
12 District of California pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, asserting jurisdiction under the
13 Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d).

14 In addition, after the LWDA declined to investigate on its own, on November 15, 2021,
15 Plaintiffs filed a separate Private Attorneys General Act of 2004, Labor Code § 2698, et seq.
16 (“PAGA”) representative action lawsuit against Defendant (the “ PAGA Complaint”). The PAGA
17 Complaint contains Plaintiffs’ PAGA representative claims based on the same facts and occurrences
18 as the Class Complaint, but seeks civil penalties on behalf of all hourly, non-exempt employees
19 employed in California since September 11, 2020 (“PAGA Period”). (Id., ¶ 13).

20 Plaintiffs investigated the claims against Defendant in the Action and also analyzed all
21 applicable defenses raised by Defendant. The investigation included review of information and
22 documents produced in preparation for the mediation, retention of a damages expert, and several
23 conferences between Plaintiffs’ counsel and Defendant’s Counsel. Plaintiffs’ Counsel believes it has
24 obtained enough information to establish the appropriateness of conditional certification of the Class
25 for settlement purposes. (Id., ¶¶ 14-15).

26 The Parties attended a full day of mediation on January 12, 2023 with mediator Paul
27 Grossman, Esq., of Paul Hastings LLP. The Parties agreed in principle to a settlement, as detailed
28 below, to resolve the putative class and representative action on these certain terms and conditions

1 to present to the Court for approval and LWDA for review, pursuant to California Rules of Court,
2 Rule 3.769 and Labor Code § 2698, et seq., in order to settle the putative class and representative
3 action and resolve their respective differences, controversies, and misunderstandings. (Hawkins
4 Decl. ¶ 24).

5 The Parties negotiated the full terms of the Joint Stipulation of Class Action Settlement and
6 Release of Claims (the “Settlement Agreement”) at arm’s length between January 12, 2023 and April
7 18, 2023, including remand of the Class Action to this Court. The Settlement Agreement constitutes
8 the terms and conditions upon which the Parties have agreed to settle, and for which they seek Court
9 approval and provide notice to the LWDA. The terms of the Settlement Agreement were reached
10 only after extensive negotiations consisting of numerous telephone conferences and e-mail
11 exchanges between counsel for the Parties. (Hawkins Decl. ¶ 25). The parties submitted a Notice of
12 Settlement and Joint Stipulation on March 1, 2023, informing this Court of the Settlement and to
13 consolidate the Class Action and PAGA Action and to file a First Amended Consolidated Complaint
14 combining the allegations and causes of action in the Class Complaint and PAGA Complaint . This
15 Court set the hearing on Plaintiffs’ Motion for Preliminary Approval for August 24, 2023.

16 **III. SUMMARY OF THE SETTLEMENT TERMS**

17 **A. The Class**

18 The Class Members are defined as “all persons who are employed or have been employed by
19 Defendant in California as hourly-paid or non-exempt employees at any time during the time period
20 from March 8, 2017 through April 30, 2023.” (Ex. 1, § 1.3). In addition, the PAGA Employees are
21 defined as all Class Members who worked any time during the PAGA Period from September 11,
22 2020 to April 30, 2023. (Id. § 1.10).

23 **B. Payment Terms**

24 1. Gross Settlement Amount: In full and complete settlement of the Actions, Defendant
25 will pay a total of \$3,700,000 as a Gross Settlement Amount (“GSA”) without refund or revision.
26 The GSA includes all payments to Plaintiffs and the Settlement Class including wages, damages, and
27 all other requests for relief alleged in the Amended Consolidated Complaint; all attorney’s fees; all
28 costs and expenses incurred by Plaintiffs and Class Counsel in the action; all costs and expenses

1 associated with the settlement administration; the employees' share of all state and federal payroll
2 taxes and withholding assessed on all amounts distributed to the Settlement Class as W-2 wages; the
3 service payment awarded to Plaintiffs; and penalties, liquidated damages, and PAGA civil penalties.
4 (Ex. 1, § 1.16). The GSA does not include the employer's share of payroll taxes, which shall be paid
5 by Defendant outside of the GSA.

6 2. Net Settlement Amount. The Net Settlement Amount is the amount available for
7 distribution to the Settlement Class (all Class Members who do not file a timely valid Request for
8 Exclusion) after deduction of any award of attorneys' fees and litigation costs, any award of a service
9 payment to Plaintiffs, the portion of the PAGA Penalty Allocation to be paid to the LWDA, and the
10 settlement administration costs. (Ex. 1, § 1.20). At this time, the Net Settlement Amount is estimated
11 to be \$2,080,000. (Hawkins Decl. ¶ 40).

12 3. Class Counsel Attorneys' Fees and Costs. Class Counsel will apply for an award of
13 \$1,295,000 for reasonable attorneys' fees and up to \$25,000 for reimbursement of actual litigation
14 costs. (Ex. 1, § 5.4).

15 4. Plaintiffs' Incentive Payment. Plaintiffs will apply for an award of \$15,000 each as
16 an incentive payment for their representation of the Class. (Ex. 1, § 5.5).

17 5. Allocation of PAGA Penalties. \$300,000 of the GSA will be allocated to the
18 settlement of Plaintiffs' PAGA claims (the "PAGA Payment"). 75% of this PAGA Payment
19 (\$225,000) will be paid to the LWDA (the "LWDA Payment") and 25% (\$75,000) will be distributed
20 to the PAGA Members as penalties. (Ex. 1, § 1.19).

21 6. Settlement Administration Costs. The costs of administration are estimated to be
22 \$15,000. (Ex. 1, § 3.2).

23 **C. Calculation of Settlement Class Members' Individual Settlement Payment**

24 The Settlement Administrator shall have the authority and obligation to calculate each
25 Settlement Class member's individual payment share in accordance with the Settlement Agreement
26 and any order of the Court. All Class members who do not timely and properly opt out and/or request
27 exclusion from the Settlement will automatically receive their corresponding share of the Net
28 Settlement Amount. Each Settlement Class member's Individual Settlement Payment will be

1 established by dividing his/her total weeks worked during the Class Period by the aggregate of all
2 weeks worked by Settlement Class members during the Class Period, then multiplying that fraction
3 by the Net Settlement Amount. 33% of each person's Settlement Payment will be paid as W-2 wages;
4 33% will be paid as interest; and 33% as unreimbursed expenses and penalties. (Ex. 1, § 5.11).

5 **D. Release by the Settlement Class**

6 Upon the Effective Date, the Settlement Class will fully release the following Released
7 Claims:

8 all claims, rights, demands, charges, complaints, causes of action, obligations, or
9 liability that were or could have been raised based on the factual allegations
10 made in the Action through April 30, 2023. This includes, but is not limited to,
11 California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223,
12 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197,
13 1197.1, 1198, , 2800, 2802; California Industrial Commission Wage Orders, Cal.
14 Code Regs., Title 8, Section 11040, et seq.; and Business and Professions Code
15 Sections 17200, et seq.; and including all claims for or related to alleged failure
16 to pay wages, overtime or double time wages, minimum and regular wages,
17 regular rate of pay; wages timely during employment, wages timely at separation,
18 meal periods and meal period premiums, rest periods and rest period premiums,
19 off-the-clock work; wage statements, written notice of sick leave, payroll records
20 and recordkeeping; unreimbursed business expenses; failure to pay additional
21 401(k) benefits and/or deferred compensation benefits and/or matching benefits
22 for payments received under the Settlement; unfair competition; unfair business
23 practices; conversion; class actions; representative actions; aggrieved party
24 claims; injunctive relief; declaratory relief; accounting; punitive damages;
25 liquidated damages; penalties of any nature (including but not limited to civil
26 penalties, waiting-time penalties,); interest; attorneys' fees and costs; and any
27 other claims arising out of or related to or filed in the Action through April 30,
28 2023. This Release does not constitute a general waiver under California Civil
Code Section 1542.

21 In addition, the PAGA Members will fully release the following Released Claims:

22 all claims for PAGA penalties that were or could have been raised based on the
23 factual allegations made in the Action through April 30, 2023. This includes, but
24 is not limited to, PAGA penalties based on alleged violation of California Labor
25 Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226.2,
26 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, ,
27 2800, 2802; California Industrial Commission Wage Orders, Cal. Code Regs.,
28 Title 8, Section 11040, et seq.; and includes all claims for or related to alleged
failure to pay wages, overtime or double time wages, minimum and regular
wages, regular rate of pay; wages timely during employment, wages timely at
separation, meal periods and meal period premiums, rest periods and rest period

1 premiums, off-the-clock work; wage statements, written notice of sick leave,
2 payroll records and recordkeeping; unreimbursed business expenses; and any
3 other claims arising out of or related to or filed in the Action through April 30,
2023.

4 (Ex. 1, §§ 6.1, 6.2).

5 **E. Administration of the Settlement and Notice Procedure**

6 The Parties propose that CPT Group, Inc. be appointed as the Settlement Administrator for
7 this Settlement. The Settlement Administrator will send the Notice of Class Action and
8 Representative Action Settlement (the “Settlement Notice”) to the Class. (Exhibit A to Settlement
9 Agreement). Defendant will provide the Class Data to the Settlement Administrator within 30 days
10 of the Court’s order fully granting preliminary approval of the Settlement Agreement. Within 30
11 days of receiving the Class Data from Defendant, the Settlement Administrator will send, via first
12 class mail and email to all Settlement Class members, the Settlement Notice.

13 Prior to the initial mailing, the Settlement Administrator will check the mailing addresses
14 provided by Defendant through the National Change of Address System. If any mailed Settlement
15 Notices are returned as undeliverable without a forwarding address, then the Settlement
16 Administrator will make reasonable efforts to determine a correct mailing address and/or locate a
17 forwarding address using a single skip-trace, and if it obtains a more recent address, will re-mail
18 such Settlement Notices. Following completion of the notice period, the Settlement Administrator
19 will provide counsel for the Parties with a declaration of due diligence and proof of mailing with
20 regard to all of its mailing efforts, and receipt of all exclusion requests, objections, or other comments
21 regarding the Settlement. (Ex. 1, § 3.6).

22 **F. Participation and Exclusion from the Settlement**

23 To request exclusion, the Class Member must send a written request for exclusion directly
24 to the Settlement Administrator. Any Class Member who, in compliance with the Settlement Notice
25 and Court order, timely and properly elects to opt out or seek exclusion from the Settlement will not
26 be entitled to any payment from the Settlement Amount, and will not be bound by the Settlement or
27 have any right to object, appeal or comment thereon. (Ex. 1, § 4.2). If a Class Member opts out or is
28

also a PAGA Member, they will still be paid their allocation of the PAGA Payment and will remain bound by the release of the Released Claims for PAGA Penalties regardless of whether they submit a request for exclusion.

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

The law favors settlement, particularly in class actions and other complex litigation cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4 Albert Conte & Herbert B. Newberg on Class Actions (“4 Newberg (4th ed. 2002)”) § 11:41 (4th ed. 2002). A class action may not be dismissed, compromised, or settled without the approval of the court. (California Rules of Court, Rule 2.769; Rule 3.770). Judicial proceedings under Federal Rules of Civil Procedure, Rule 23, have led to a defined procedure and specific criteria for settlement approval in class action settlements, as described in the Manual for Complex Litigation (Fourth) (“Manual”) § 21.63, et seq. (2004), that California courts commonly use. Thus, California courts consistently use settlement approval procedures that consists of three distinct steps: (1) preliminary approval of the proposed settlement at an informal hearing; (2) dissemination of the Notice of Settlement to all affected class members; and (3) a “formal fairness hearing,” at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. (Manual §§ 21.632, 21.633, 21.634).

The purpose of the preliminary evaluation of class action settlements is to determine whether the proposed settlement is within the range of possible approval, and thus whether notice to the class of the settlement terms and conditions and the scheduling of a formal fairness hearing is worthwhile. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; 4 Newberg § 11:25). For preliminary approval, the Court need find only that the settlement falls within the range of possible final approval, as described as the “reasonable range.” *See, e.g., North County Contractor’s Assn. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90. Trial courts have broad discretion to determine whether a class action settlement is fair. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The trial court must exercise its discretion through the application of several

1 well-recognized factors when deciding whether a class action settlement is fair. *Clark v. American*
2 *Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799. The list of factors, which “is not
3 exhaustive and should be tailored to each case,” includes “the strength of plaintiff’s case, the risk,
4 expense, complexity and likely duration of further litigation, the risk of maintaining a class action
5 status through trial, the amount offered in settlement, the extent of discovery completed and the state
6 of the proceedings, the experience and views of counsel, the presence of a governmental participant,
7 and the reaction of the class members to the proposed settlement.” *Nordstrom Com. Cases* (2010)
8 186 Cal.App.4th 576, 581; *Kullar*, 168 Cal.App.4th at 128, quoting *Dunk v. Ford Motor Co.* (1996)
9 48 Cal.App.4th 1794, 1801. The most important factor for the trial court to consider in determining
10 whether to approve a class action settlement is the strength of the case for plaintiff on the merits,
11 balanced against the amount offered in settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
12 *Angeles* (2010) 186 Cal.App.4th 399, 408; *Kullar*, 186 Cal.App.4th 116 at 130. In sum, at the
13 preliminary approval stage, the trial court must determine that the settlement was not the product of
14 fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate. *Nordstrom*,
15 186 Cal.App.4th at 581.

16 **V. LEGAL ARGUMENTS**

17 **A. The Parties Reached the Class and Representative Settlement as a Result of** 18 **Non-Collusive, Arm’s-Length, Informed Negotiations**

19 California courts recognize that “a presumption of fairness exists where ... ‘where: (1) the
20 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient
21 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation,
22 and (4) the percentage of objectors is small.” *Dunk*, 48 Cal.App.4th at 1802; *see also, Wershba*, 91
23 Cal.App.4th at 245; *Clark*, 175 Cal.App.4th at 799. Furthermore, the court undoubtedly should give
24 considerable weight to the competency and integrity of counsel and the involvement of a neutral
25 mediator in assuring that a settlement agreement represents an arm’s-length transaction entered
26 without self-dealing or other potential misconduct. *Kullar*, 168 Cal.App.4th at 129.

27 Here, the Parties negotiated the proposed Settlement in good faith and at arm’s-length,
28 assisted by an experienced wage and hour class action mediator. In reaching the Settlement, counsel

on both sides relied on their respective substantial litigation experience in similar employment class actions, and thorough analysis of the legal and factual issues presented in the case. (Hawkins Decl. ¶¶ 4-8; 28-37). Settlement discussions between the parties resulted only after exchanging substantial relevant information and after arm's-length negotiations under the supervision of the experienced mediator in wage and hour cases. These informed hard-fought negotiations resulted in the proposed Settlement for which Plaintiffs now seeks preliminary approval.

1. *The Parties Conducted a Thorough Investigation Prior to Entering into the Settlement*

The parties conducted a thorough investigation into the merits of Plaintiffs' class and representative action claims prior to entering into the Settlement. (Hawkins Decl. ¶¶ 28-37). Specifically, Plaintiffs conducted several fact-finding interviews with Plaintiffs and reviewed documents and records produced by Plaintiffs in support of their claims, and spent significant time with Plaintiffs discussing the contents of these documents. (Id.). Prior to the filing of the Complaint, Plaintiffs' counsel requested a copy of Plaintiffs' employment file. Plaintiffs' counsel spent significant time and effort reviewing Plaintiffs' employment records, including Plaintiffs' time sheets, payroll records produced by Defendant prior to the filing of the Complaint. (Id.). The Parties also exchanged initial disclosures and submitted a Rule 26(f) report pursuant to Fed. R. Civ. P. 26(f).

Plaintiffs and Defendant engaged in extensive pre-mediation communication. Plaintiffs also engaged an expert to conduct a thorough payroll analysis utilizing the Defendant's time and payroll data. In preparation for mediation, Defendant provided to Plaintiffs significant amounts of mediation data, which included a representative sampling of time and pay data. Specifically, Defendant provided more than 1,600 pages of time and pay data, as well as Plaintiffs' personnel files, policies and procedures, and shift schedules. (Id., ¶ 33).

Plaintiff's counsel reviewed the data produced by Defendant; the time and pay records for Plaintiffs; the policies and procedures; and other documents related to this litigation. Subsequently, Plaintiffs' expert performed a comprehensive damage analysis to calculate the total alleged unpaid wages for "off-the-clock" work and rounding, the total alleged unpaid overtime wages, the total

1 alleged number of meal and rest period violations, the total alleged amount of premiums, the total
2 alleged amount penalties for late payment of wages, the total alleged amount of liquidated damages
3 for unpaid wages, and alleged PAGA civil penalties. Plaintiffs' counsel further investigated
4 Defendant's contentions and defenses, and considered the risks of no recovery, balanced by the
5 extensive analysis Plaintiffs' counsel had performed in valuing the case. (Hawkins Decl. ¶¶ 15-27).

6 The information obtained and exchanged between the Parties was sufficient for the Parties
7 to make an informed decision at the mediation about the resolution of this case. It was after a full-
8 day mediation, and the review of calculations and valuations of each claim by counsel for both
9 Parties and the mediator, and after consideration of all the risks of continuing litigation, that the
10 Parties agreed to accept \$3,700,000 in settlement of all of the claims presented for the Class Period.

11 2. *Plaintiff's and Class Counsel's Experience and Views Favors Preliminary Approval*

12 Plaintiffs' liability and damages evaluation was premised on, among other considerations, a
13 careful and extensive analysis of the scope and applicability of the defenses claimed by Defendant.
14 Specifically, Defendant contended that meal periods were provided (and paid under the CBA) and
15 therefore there is no violation.. In addition, Defendant presented evidence that it paid meal and rest
16 period premiums. Moreover, Defendant argued that the Class Members were represented by a very
17 active union which, if there were problems, would have raised them which it did not. While the
18 Parties disagree over the merits of the alleged claims, counsel for the Parties agree that the Settlement
19 reached is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
20 facts and circumstances. (Hawkins Decl. ¶¶ 15-27).

21 Plaintiffs' counsel considered the likelihood of significant delay and extensive litigation this
22 case presents as the Parties are in strong disagreement as to the merits of the claims. (Id.). Defendant
23 contends it complied with California law at all times, and denies any liability or wrongdoing of any
24 kind associated with the claims alleged in the Complaint. Plaintiffs believe their claims are
25 meritorious. Similarly, Plaintiffs' counsel considered the likelihood of obtaining a similar or greater
26 recovery in the event Plaintiffs obtained a judgment in their favor. The fact that, even if Plaintiffs
27 prove Defendant's liability for all the claims alleged in the Complaint, Plaintiffs would still have to
28 prove the amount of damages owed in this case weighs in favor of preliminary approval of the

1 Settlement. Absent a settlement, the Parties will have to engage in costly and complex damages
2 calculations regarding the claims alleged in the lawsuit (e.g., rounding, off-the-clock work, meal/rest
3 period premiums owed, interest, and PAGA penalties, among others), which are subject to a myriad
4 of differing calculations and formulas. Furthermore, Plaintiffs' counsel examined the likelihood of
5 obtaining class certification and maintaining the class action status through trial. In addition, if this
6 case were to continue as a class action through trial, both Parties will necessarily incur substantial
7 litigation expenses, including the expense and time of analyzing voluminous document, and finding
8 and hiring statisticians and other expert witnesses to testify at trial.

9 Therefore, Plaintiffs' counsel, who is knowledgeable about and has done extensive research
10 with respect to wage and hour laws and potential defenses to the claims of the Settlement Class, has
11 considered the risks of significant delay, the expense, complexity, and likely duration of further
12 litigation, the risk of obtaining class certification status and maintaining the class action status
13 through trial, the amount offered in settlement, the extent of investigation and the stage of the
14 proceedings, the experience and views of the Parties' counsel and the mediator, and believes that the
15 Settlement reached in this case is fair, reasonable, and adequate and in the best interest of the Class.
16 The endorsement of qualified and well-informed counsel regarding the settlement as fair is entitled
17 to significant weight. *See Dunk*, 48 Cal.App.4th at 1802. Plaintiffs' counsel, who are experienced
18 wage and hour class action litigators, support the Settlement as fair, reasonable, and adequate, and
19 in the best interest of the class as a whole, and also believe it is an excellent result for the class. (*Id.*).

20 **B. The Settlement Provides Reasonable, Fair, and Adequate Relief to the**
21 **Settlement Class Members Taking Into Consideration the Risks and Expenses**
22 **of Further Litigation**

23 The Settlement results in a substantial benefit to all Settlement Class members. Assuming
24 the Court approves the requested amounts for settlement administration costs, attorneys' fees and
25 costs to Class Counsel, service payment to Plaintiff, and PAGA penalties, Plaintiff estimates the
26 average Individual Settlement Payment to be approximately **\$1,980** (\$2,080,000 / 1,050 class
27 members).

28 Plaintiffs' counsel analyzed the merits of the class claims, and each one presented significant
hurdles. The recovery of \$3,700,000 for the Class is an extremely fair result, considering all the

1 significant risks of further litigation, the likelihood of obtaining class certification, the risks of
2 maintaining class action status through trial and after appeal, the extent of investigation completed
3 to date, the stage of the proceedings, the likelihood of prevailing on the merits and obtaining 100%
4 of the damages claimed, the delay and duration of the class action, and the likelihood of multiple
5 appeals. Moreover, the Settlement reached by the Parties provides a fair and adequate method of
6 distribution of the Settlement proceeds to the Settlement Class members in this case.

7 The individual settlement payments (which will increase if any class member decides not to
8 participate in the Settlement) provide a fair and reasonable recovery to the entire class. While these
9 amounts represent a discount on the overall exposure to Defendant that Plaintiffs believe to be at
10 issue, this reduction in the amount of recovery represents an extremely reasonable compromise
11 considering the substantial risks Plaintiffs and the class members face on class certification, liability,
12 and damages issues. Defendant vigorously deny all claims in this litigation. Defendant argued that
13 the claims are not amenable to class certification. Defendant contended that Plaintiffs are unqualified
14 to represent all class members because they are not typical of the Class. Specifically, Defendant
15 contended that the experiences of Class Members vary dramatically by location (Defendant operated
16 three plants in California), shift (rotating shift, graveyard shift, day shift, and swing shift),
17 department, and position and Plaintiffs only worked as maintenance mechanics which was a small
18 subset of the overall class. (Hawkins Decl. ¶ 23). In addition, Defendant argued that Plaintiffs could
19 not certify a class where there were three different controlling CBA's applicable to the proposed
20 Class. As such, Plaintiff's counsel considered the risks of receiving no recovery, balanced by the
21 investigation and analysis Plaintiff's counsel performed in valuing the case. The Settlement commits
22 Defendant to establish a Qualified Settlement Fund ("QSF") maintained by the Settlement
23 Administrator and to pay \$3,700,000 upon the Effective Date. In contrast, continued litigation would
24 be costly and time consuming, and appeal from the class certification decision and appeal from any
25 judgment in Plaintiffs' favor would likely occur. Such efforts would likely result in a delay of several
26 years before this case could finally be resolved. Therefore, the Settlement provides a significant and
27 timely recovery to the Settlement Class that easily falls within the range of reasonableness.

1 **C. The Settlement Terms Fall Within the Range of Reasonableness**

2 After preliminary approval and notice to the Settlement Class, Class Counsel will move this
3 Court for a service payment of \$15,000 to each Plaintiff, the Class Representatives, to recognize
4 their time and effort on behalf of the Class. This payment will be in addition to the payment they
5 may receive as a Class Member. Class Counsel will also move the Court for an award of reasonable
6 litigation costs and attorneys' fees based on the "common fund" doctrine for work performed and
7 resources diverted by Class Counsel in representing Plaintiffs and the Class in this litigation.

8 1. *Courts Routinely Award the Class Representative a Service Payment for Their*
9 *Service to the Class*

10 Court routinely approve service payments to compensate named plaintiffs for the services
11 they provide and the risks they incur during the course of class litigation. *See Bell v. Farmers Ins.*
12 *Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their
13 efforts in bringing class case); Manual (4th ed. 2011) § 21.62 note 971 (noting that service payments
14 are warranted). In approving service payments, courts frequently approve awards of \$10,000 or
15 more. *See, e.g., In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-95
16 (upholding \$10,000 service payments to each of the four class representatives). The factors courts
17 use in determining the amount of service payments include; (1) a comparison between the service
18 payment and the range of monetary recovery available to the class; (2) time and effort put into the
19 litigation; (3) whether the litigation will further the public policy underlying the statutory scheme;
20 and (4) risks of retaliation. *See Clark*, 175 Cal.App.4th at 805; *In re Cellphone Fee Termination*
21 *Cases*, 186 Cal.App.4th at 1394.

22 All of the above factors support the service payment, Plaintiffs request this Court to
23 preliminarily approve. In this case, Plaintiffs assisted counsel with the investigation of their claims,
24 preparation of the Complaint, provided relevant documents, worked with Class Counsel throughout
25 the case, and was available throughout the mediation. (Hawkins Decl. ¶¶ 70-72); Plaintiffs were
26 crucial participants in the prosecution of this litigation, as they actively participated in case
27 development and settlement negotiations and produced relevant documents and information in this
28 case. (*Id.*). Plaintiffs communicated regularly with Class Counsel. They spent significant hours

1 discussing with Class Counsel the facts related to their employment with Defendant, including
2 discussing their job duties, shift schedules, company policies relating to payment of regular and
3 overtime wages, meal and rest periods, and expense reimbursement, among others. (*Id.*). Moreover,
4 Plaintiffs, in agreeing to bring this action, formally agreed to accept the responsibility of representing
5 the interests of all class members, and to assume the risks and potential of paying costs or attorneys'
6 fees to Defendant. Accordingly, the payment to Plaintiffs should be preliminarily approved.

7 2. *The Work Performed by Class Counsel Supports the Request for Reimbursement of*
8 *Litigation Costs and Attorneys' Fees from the Common Fund*

9 As demonstrated through the declaration of James R. Hawkins, appointment of Class
10 Counsel meets the requirements of California Code of Civil Procedure § 382 and thus is appropriate
11 here. There has been a significant amount of work performed by Plaintiffs' counsel, including
12 conducting extensive research, investigation and analysis of each potential cause of action. Class
13 Counsel is highly experienced in wage and hour matters such as this action, is experienced in class
14 action cases, and has been appointed class counsel in numerous employment class action cases.
15 (Hawkins Decl. ¶¶ 4-8). Additionally, Class Counsel has committed and continues to commit
16 significant financial and staffing resources to the representation of the Class Members. Class
17 Counsel's work resulted in the Settlement which provides significant benefits to class members.

18 As many courts have noted, the amount of attorneys' fees typically negotiated in
19 comparable litigation should be considered in the assessment of a reasonable fee in representative
20 and class actions in which a fee agreement is impossible. *Lealao v. Beneficial California, Inc.* (2000)
21 82 Cal.App.4th 19, 47. Our legal system greatly relies on private litigants to enforce substantive
22 provisions of law through class actions, especially Labor Code wage and hour provisions. Therefore,
23 courts recognize that an attorney providing the essential enforcement services must be provided
24 incentives comparable to those negotiated in the private bargaining that takes place in the legal
25 marketplace. *Id.* citing *Deposit Guaranty Nat. Bank v. Roper* (1980) 445 U.S. 326, 338. It has
26 therefore been urged (most persistently by Judge Richard Posner) that in defining a "reasonable fee"
27 in such representative actions the law should "mimic the market."

28 California courts typically award common fund fees calculated using a *percentage-of-fund*

1 *method* that is not dependent on counsel’s lodestar amount. Richard M. Pearl, California Attorney
2 Fee Awards § 5.19 (CEB 3d ed. 2010) (citing *Sutter Health Uninsured Pricing Cases* (2009) 171
3 Cal.App.4th 495, 512; *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th at 726; *Apple Computer, Inc. v.*
4 *Super. Ct.* (2005) 126 Cal.App.4th 1253, 1270. Where, as here, the class benefit “can be monetized
5 with a reasonable degree of certainty,” the court has discretion to award fees using percentage figures
6 that accurately reflect the legal marketplace. *Lealao*, 82 Cal.App.4th at 49; *In re Consumer Privacy*
7 *Cases* (2009) 175 Cal.App.4th 545, 557-58 & n. 13 (citing *Chavez v. Netflix, Inc.* (2008) 162
8 Cal.App.4th 43, 65-66). The common fund approach is especially suitable where, as here, a readily
9 ascertainable (indeed fixed) settlement sum is available to the Settlement Class and the benefits
10 received by the Settlement Class can be monetized without undue speculation. *Dunk*, 48 Cal.App.4th
11 at 1808-09.

12 Under the terms of the proposed Settlement, Class Counsel will seek an award of costs not
13 to exceed \$25,000 and attorneys’ fees in the amount of \$1,295,000, or one-third of the Settlement
14 Amount. (Ex. 1, § 5.4). This amount is well within the range customarily approved by California
15 courts in comparable wage and hour class actions. Newberg § 14:6 (studies show that “fee awards
16 in class actions average around one-third of the recovery”).

17 Thus, the requested amount of attorneys’ fees and costs in this case is reasonable because
18 Class Counsel has had to divert many of its resources to this case to contend with Defendant’s
19 spirited defense and analyze documents in order to effectively prosecute and settle this action. Class
20 Counsel spent significant time and effort in litigation, investigation and preparation for mediation
21 and settlement negotiations. Class Counsel’s efforts included review and analysis of Plaintiffs’ time
22 and payroll records, company policies and practices, and expert analysis of Defendant’s time and
23 payroll data. Additional time will be spent attending the hearing on preliminary approval, and if
24 approved, the time Class Counsel will spend on the settlement administration, drafting the final
25 approval motion and supporting documents, attending the hearing on final approval, and monitoring
26 the funding of the Settlement and distribution. Class Counsel will provide a lodestar calculation at
27 the time of final approval of the Settlement.

28 Moreover, Class Counsel’s fee and costs request is very fair and reasonable in light of the

1 risks taken and the time, money, and effort Class Counsel invested in this case to date, and the
2 significant benefits achieved on behalf of the Settlement Class. *See In re Omnivision Technologies,*
3 *Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1046 (“the overall result and benefit to the class from the
4 litigation is the most critical factor in granting the fee award”); *see also McCown v. City of Fontana*
5 (9th Cir. 2009) 565 F.3d 1097, 1102 (the ultimate reasonableness of the fee “is determined primarily
6 by reference to the level of success achieved by the plaintiff). Defendants do not oppose Class
7 Counsel’s fees and costs request. Accordingly, for purposes of this motion, the requested fee amount
8 falls well within the range of reasonableness.

9 3. *The Amount of the PAGA Penalty Allocation is Reasonable*

10 Under PAGA, California Labor Code § 2698, et seq., the LWDA is entitled to 75% of any
11 settlement of civil penalties awardable under the Labor Code. Cal. Lab. Code § 2699(i). The parties
12 negotiated the \$300,000 amount in good faith, and this sum represents a fair and reasonable amount
13 of PAGA penalties. This amount was not the result of self-interest at the expense of the Settlement
14 Class. Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
15 indication that this amount was the result of self-interest at the expense of other Class Members,”
16 such amounts are generally considered reasonable. *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3,
17 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9 (approving a PAGA settlement of 0.3% or
18 \$1,500).

19 **VI. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

20 California Rules of Court 3.769(c)-(e) authorize courts to grant conditional certification of a
21 settlement class. Conditional class certification is appropriate at the preliminary approval stage
22 where, as here, the Court has not certified the proposed Class, as it is defined in the Settlement
23 Agreement, and the requirements for certification are met. 4 Newberg § 11:22 (4th ed. 2002). The
24 purpose of conditional class certification is to facilitate distribution to all Class Members of the
25 notice of the terms of the proposed Settlement and the date and time of the final approval hearing.
26 *See Manual* § 21.632. Neither formal notice nor a hearing is required for the Court to grant
27 conditional certification; the Court may grant such relief upon informal application by the settling
28 parties and may conduct any necessary hearing in court or in chambers, at the Court’s discretion.

1 **A. Plaintiffs have Shown the Existence of an Ascertainable and Sufficiently**
2 **Numerous Class**

3 Generally, a class is ascertainable if “it identifies a group of unnamed plaintiffs by describing
4 a set of common characteristics sufficient to allow a member of that group to identify himself as
5 having a right to recover based on the description.” *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
6 Cal.App.4th 1524, 1533. In this case, Plaintiffs identified class members by the classification
7 Defendant gave to them upon hiring (non-exempt), the specific location they worked (California),
8 and the time period they worked (March 8, 2017 to April 30, 2023). Plaintiffs contend, and Defendant
9 does not dispute for settlement purposes only, the proposed Settlement Class definition allows the
10 Parties to easily ascertain the Class Members, and allows the Class Members to easily identify
11 themselves, as a member of the class. The numerosity requirement is met if the class is so large that
12 joinder of all members would be impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union,*
13 *Local No. 30* (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982). Here, Defendants’ payroll records
14 show that the proposed Settlement Class contains approximately 1,050 class members, which makes
15 the joinder of all putative class members impracticable.

16 **B. The Settlement Class Members Share Common Questions of Law and Fact with**
17 **Plaintiff**

18 The commonality requirement is met if there are questions of law and fact common
19 to the class. *Hanlon v. Chrysler Corp.* (9th Cir. 2009) 150 F.3d 1011, 1019. Plaintiffs contend that
20 the members of the proposed Class and Plaintiffs have all worked under the same policies and
21 practices relating to meal and rest breaks, schedules, rounding, wage statements, and expense
22 reimbursement. A class representative adequately represents the class when: (1) the named plaintiff
23 has no fundamental conflict of interest with the class he or she purports to represents and (2) the
24 named plaintiff, through qualified counsel, vigorously and tenaciously protects the interests of the
25 class. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 472. Class Counsel must be
26 experienced, competent, and generally able to conduct the proposed litigation. *Miller v. Woods*
27 (1983) 148 Cal.App.3d 862. There are no conflicts between Plaintiffs and the Class. Plaintiffs and
28 Class Counsel have demonstrated their commitment to vigorously prosecuting the case on behalf of

1 the Class. The adequacy requirement is therefore met.

2 **C. Class-wide Settlement is Superior to Multiple Individual Lawsuits**

3 Manageability of the trial is not an issue in this case because the parties reached a settlement.
4 *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620. Therefore, for settlement purposes
5 only, class resolution in this case, particularly in the settlement context, is superior to any other
6 available method for the fair and efficient resolution of the controversy. *See Dunk*, 48 Cal.App.4th
7 at 1807 n. 19.

8 **VII. THE PROPOSED NOTICE TO THE SETTLEMENT CLASS IS APPROPRIATE**

9 The court must provide class members the best class action settlement notice practicable. *See*
10 *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12. Due process does not guarantee any
11 particular procedure but rather only requires notice reasonably calculate to apprise interested parties
12 of the pendency of the action affecting their interests and an opportunity to present their objections.
13 *Ryan v. California Interscholastic Federation- San Diego Section* (2001) 94 Cal.App.4th 1048, 1072.
14 California Rules of Court, Rule 3.769(f) requires that class members be provided with notice of the
15 final approval hearing, as well as an explanation of the proposed settlement and objection procedures,
16 in the manner specified by the Court.

17 The proposed class notice here satisfies these requirements because it informs the Class, in
18 plain language, about the terms of the Settlement and explains the payments to which they are entitled
19 under the Settlement. (Exhibit A to Settlement Agreement). The proposed notice plan, calling for
20 first-class mailed and email notice to all Class Members, is consistent with class notices approved
21 by state and federal courts, and under the circumstances here is the best notice practicable. The class
22 notice in this case summarizes the lawsuit, including the contentions and denials of the Parties, the
23 proceedings to date, and the terms and conditions of the Settlement. The class notice informs Class
24 Members that a final approval hearing has been scheduled, informs them of their right to object to
25 the Settlement, and explains the procedure for presenting such objections. Additionally, it notifies
26 them of the procedure to request exclusion from the Settlement.

27 ///

28 ///

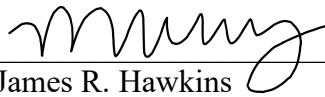
1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that this Court enter the concurrently
3 filed [Proposed] Preliminary Approval Order, and set a final approval hearing.
4

5 Dated: April 28, 2023

JAMES HAWKINS APLC

6
7 By:



James R. Hawkins
Christina M. Lucio
Mitchell J. Murray

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9 Attorneys for Plaintiffs and the Proposed Class
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