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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DANIEL ANALCO, individually, and on behalf
of Aggrieved Employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

FELIX CHEVROLET, LP, a California limited
partnership; and DOES 1 through 25, inclusive,

Defendants.

Case No. 21STCV36654

Honorable Robert B. Broadbelt
Department 53

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

Date: August 4, 2022
Time: 10:00 a.m.
Dept.: 53

Complaint Filed: October 5, 2021
Trial Date: None Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **August 4, 2022 at 10:00 a.m.** in Department 53 of the above-captioned Court located at 111 N. Hill Street, Los Angeles, California 90012, pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and California Labor Code section 2699(l), Plaintiff Daniel Analco (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”) settlement between Plaintiff and Defendant Felix Chevrolet, L.P. (“Defendant”).

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit A to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement;
2. Certifying the Class for Settlement purposes;
3. Appointing Plaintiff Daniel Analco as the Class Representative for Settlement purposes;
4. Appointing Jonathan M. Genish of Blackstone Law, APC as Class Counsel for Settlement purposes;
5. Approving the proposed Notice of Class Action Settlement attached as Exhibit 1 to the Settlement Agreement (“Class Notice”) to be mailed to the Class;
6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;
7. For each Class Member, directing Defendant to furnish their full names, last known home addresses, last known telephone numbers, social security numbers, start and end dates of employment, total workweeks worked during the Class Period, total workweeks worked during the PAGA Period, and any other information the Settlement Administrator may reasonably need to administer this Settlement, to the Settlement Administrator within thirty (30) calendar days after the Court grants preliminary approval of the Settlement;
8. Approving the proposed deadlines for the settlement administration process; and
9. Setting a Final Approval Hearing.

1 Pursuant to California Labor Code section 2699(1)(2), a copy of the proposed Settlement, as well
2 as information regarding the preliminary approval hearing on this matter, were submitted to the California
3 Labor and Workforce Development Agency via online submission concurrently with the filing of this
4 motion. (Genish Decl. ¶ 47).

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

11 Respectfully submitted,

12 Dated: July 13, 2022

BLACKSTONE LAW, APC

13
14 By: 
Jonathan M. Genish
Attorneys for Plaintiff Daniel Analco

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel Analco (“Plaintiff”) seeks preliminary approval of a Joint Stipulation of Class
4 Action and PAGA settlement (“Settlement” or “Settlement Agreement”) on behalf of all current and
5 former hourly-paid, non-exempt employees employed by Defendant Felix Chevrolet, L.P. (“Defendant”) in Los Angeles, California (Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for
6 Preliminary Approval of Class Action and PAGA Settlement [“Genish Decl.”], ¶ 13, Exh. B thereto).

7 The Settlement terms are outlined as follows:

- 8
- 9 • Class Size: Approximately 122 individuals.
 - 10 • Gross Settlement Payment: Three Hundred Thirty-Seven Thousand Five Hundred Dollars
11 and Zero Cents (\$337,500.00), exclusive of employer-side payroll taxes.
 - 12 • Settlement Administration Costs: Not to exceed Ten Thousand Dollars and Zero Cents
13 (\$10,000.00).
 - 14 • Class Representative Enhancement Award: Seven Thousand Five Hundred Dollars and Zero
15 Cents (\$7,500.00).
 - 16 • PAGA Penalties: Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), 75% of
17 which will be paid to the California Labor and Workforce Development Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Members.
 - 18 • Requested Attorneys’ Fees and Costs: Attorneys’ fees of One Hundred Twelve Thousand
19 Five Hundred Dollars and Zero Cents (\$112,500.00) (thirty-three percent of the Gross
20 Settlement Amount) plus actual litigation costs and expenses not to exceed Thirty Thousand
21 Dollars and Zero Cents (\$30,000.00).
 - 22 • Estimated Net Settlement Fund: Net Settlement Amount of One Hundred Fifty-Two
23 Thousand Five Hundred Dollars and Zero Cents (\$152,500.00) to be distributed to
24 Participating Class Members.
 - 25 • Average Estimated Individual Settlement Payment, including the 25% of the PAGA Penalties
26 allocated for PAGA Members: \$1,300.00.

27 As set forth herein, the Settlement is the product of informed discovery, arms-length negotiations,
28 and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore respectfully

1 requests that the Court grant preliminary approval of the proposed Settlement, conditionally certify the
2 Class, approve the proposed Class Notice, and set a hearing date for final settlement approval, among
3 other requested relief.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 Defendant Felix Chevrolet, L.P. is a car dealership in Los Angeles. Plaintiff worked for Defendant
6 as a non-exempt, hourly-paid employee from approximately May 11, 2021 to August 31, 2021.
7 (Declaration of Daniel Analco in Support of Plaintiff's Motion for Preliminary Approval of Class Action
8 and PAGA Settlement ["Analco Decl."] ¶ 3).

9 On October 5, 2021, Plaintiff provided notice to the LWDA and to Defendant of his intent to seek
10 civil penalties pursuant to the Private Attorneys General Act, Labor Code section 2698, et seq. ("PAGA").
11 (Genish Decl., ¶ 9, Exh. A thereto). On October 5, 2021, Plaintiff filed his complaint in Los Angeles
12 County Superior Court. He alleged one cause of action pursuant to PAGA. Plaintiff sought PAGA
13 penalties for Defendant's failure to pay overtime wages (Labor Code §§ 510 and 1198), failure to pay
14 minimum wages (Labor Code §§ 1194, 1197, and 1197.1), failure to provide meal periods (Labor Code
15 §§ 226.7 and 512(a)), failure to provide rest periods (Labor Code § 226.7), failure to timely pay wages
16 during employment (Labor Code § 204), failure to timely pay wages upon termination (Labor Code §§
17 201, 202, and 203), failure to provide accurate itemized wage statements (Labor Code § 226(a)), failure
18 to keep complete and accurate payroll records (Labor Code § 1174(d)), and failure to reimburse business
19 expenses (Labor Code §§ 2800 and 2802). (Genish Decl., ¶ 9.)

20 The parties met and conferred with respect to the potential resolution of this action by means of a
21 private mediation and agreed to exchange informal discovery as part of that process. (Genish Decl., ¶
22 10). Pursuant to their agreement to mediate, Defendant produced a random sampling of aggrieved
23 employees time and pay records, as well as information and documents concerning the claims set forth
24 in Plaintiff's Complaint, including but not limited to, Defendant's employee handbook and relevant wage
25 and hour policies, meal and rest periods, and business expense reimbursements. (Genish Decl., ¶ 10).

26 After a thorough investigation and analysis of these documents and data, on March 3, 2022, the
27 parties attended a formal mediation with Steven G. Pearl, a neutral and respected mediator with extensive
28 experience in complex wage and hour matters. (Genish Decl., ¶ 11). At the mediation, the Parties

engaged in intensive settlement discussions during which they debated their respective positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (Genish Decl., ¶ 11). After a full day of mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis, and shortly thereafter executed a memorandum of understanding memorializing the key settlement terms. (Genish Decl., ¶ 11). Following mediation, the parties worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (Genish Decl., ¶ 12). On May 31, 2022, after additional discussions and revisions to the agreement, the Settlement Agreement was fully executed. (Genish Decl., ¶ 12, 13, Exh. B).

On May 5, 2022, per the Settlement Agreement, Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code section 2698 et seq. (“FAC”). Plaintiff brought the following claims: 1. Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime); 2. Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages); 3. Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); 4. Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums); 5. Violation of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); 6. Violation of Cal. Labor Code § 226(a) (Failure to Provide Accurate Wage Statements); 7. Violation of Cal. Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); 8. Violation of Cal. Business & Professions Code § 17200, et seq.; and 9. Violation of Cal. Labor Code § 2699, et seq. (Private Attorneys General Act) (Genish Decl., ¶ 14).

Now, following substantial investigation and extensive settlement negotiations, Plaintiff seeks preliminary approval of the proposed settlement, which will resolve all class and representative claims alleged in the FAC.

In accordance with Labor Code sections 2699 et. seq., and concurrently with the filing of this motion, Plaintiff’s counsel provided notice of the proposed settlement to the LWDA. (Genish Decl., ¶ 47).

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III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as “(i) all PAGA Members; and (ii) all individuals who worked for Defendant as hourly-paid and/or non-exempt employees, but excluding those employed as commissioned vehicle salespeople, in the State of California at any time during the Class Period who have not previously released their employment-related claims against Defendant.” (“Class Members” or “Class”). (Genish Decl., ¶ 15; Settlement Agreement, ¶ 38). The Class Period and release of claims begins on March 3, 2018 and ends on May 2, 2022. (Genish Decl., ¶ 15; Settlement Agreement, ¶ 6). It is estimated that there were 122 Class Members as of March 3, 2022. (Genish Decl., ¶ 15).

B. Amount of Settlement

The parties have agreed to settle the Class and PAGA claims at issue in the FAC for a non-reversionary Gross Settlement Payment of Three Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$337,500.00), exclusive of any employer-side payroll taxes. (Genish Decl., ¶ 16; Settlement Agreement ¶ 15).

C. Allocation and Funding of the Gross Settlement Payment

The Gross Settlement Payment is a common fund and therefore includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Payment includes: (1) Class Counsel’s fees in the amount of thirty-three percent (33%) of the Gross Settlement Payment, equaling One Hundred Twelve Thousand Five Hundred Dollars and Zero Cents (\$112,500.00); (2) Class Counsel’s actual litigation costs, not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00); (3) Settlement Administration Costs, capped at Ten Thousand Dollars and Zero Cents (\$10,000.00); (4) Class Representative Enhancement Award in the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff; and (5) PAGA Penalties of Twenty Five Thousand Dollars and Zero Cents (\$25,000.00). (Genish Decl., ¶ 16; Settlement Agreement ¶¶ 14, 32, 43-46). After the above-estimated amounts are deducted from the Gross Settlement Payment, approximately 122 Class Members will share in a Net Settlement Fund of approximately One Hundred Fifty Two Thousand Five Hundred Dollars and Zero Cents (\$152,500.00) (Genish Decl., ¶ 16).

1 The Net Settlement Fund will be distributed and paid to Participating Class Members on a pro-
2 rata basis based on the number of workweeks worked during the Class Period. (Genish Decl., ¶ 17;
3 Settlement Agreement ¶ 50). This will provide Participating Class Members with an average estimated
4 payment of \$1,300.00. (Genish Decl., ¶ 17). The actual payments to Participating Class Members will
5 vary based on the actual weeks worked by Participating Class Members and shall be confirmed by the
6 Settlement Administrator in advance of the final approval hearing. (Genish Decl., ¶ 17). Employees who
7 worked during the PAGA Period shall receive a share of the 25% portion of the PAGA Penalties
8 designated for distribution to PAGA Members. (Genish Decl., ¶ 18, Settlement Agreement ¶ 50). These
9 payments will be distributed on a pro rata basis based on the number of workweeks worked during the
10 PAGA Period. (Genish Decl., ¶ 18; Settlement Agreement ¶ 50.)

11 Payments to Participating Class Members will be allocated as 20% wages, 40% interest, and 40%
12 penalties. (Genish Decl., ¶ 19; Settlement Agreement ¶ 53). The employee share of any applicable
13 payroll taxes on wages will be deducted from the wage portion of each Participating Class Member's
14 Individual Settlement Payment. (Genish Decl., ¶ 19; Settlement Agreement ¶ 53). Employer-side payroll
15 taxes shall be paid by Defendant separately from and in addition to the Gross Settlement Payment.
(Genish Decl., ¶ 19; Settlement Agreement ¶ 15).

16 The Settlement Agreement is a non-reversionary and a non-claims made settlement. (Genish
17 Decl. ¶ 20; Settlement Agreement ¶ 15). All money from the Net Settlement Fund will be distributed to
18 Participating Class Members. (Genish Decl., ¶ 20; Settlement Agreement ¶¶ 52, 54). No money will
19 revert to Defendant. (Genish Decl., ¶ 20; Settlement Agreement ¶ 15). Any Individual Settlement
20 Payment checks remaining uncashed after 180 days will be transferred to the California State Controller's
21 Office and held in a trust for such Participating Class Members and PAGA Members. (Genish Decl., ¶
22 21; Settlement Agreement, ¶ 55). As such, no "unpaid residue" under California Code of Civil Procedure
23 section 384 will result from the Settlement. (Genish Decl., ¶ 21; Settlement Agreement ¶ 55).

24 **D. Release of Class Claims**

25 In exchange for participating in the Settlement, Participating Class Members will release their
26 wage and hour claims against Defendant; however, the release for Participating Class Members is
27 narrowly tailored to only release claims based upon the facts alleged in the FAC during the Class Period.
28 (Genish Decl., ¶ 22; Exh. B thereto, Settlement Agreement ¶ 33, 67). Specifically, upon the funding of

1 the Gross Settlement Payment and all applicable employer-side payroll taxes by Defendant, each and
2 every Settlement Class Member who does not timely opt out of the Settlement, on behalf of themselves,
3 their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be deemed to have
4 fully, finally and forever released, settled, compromised, relinquished and discharged any and all of the
5 Defendant Felix Chevrolet, LP, and its past, present and/or future, direct and/or indirect, principals,
6 owners, executives, officers, directors, members, managers, employees, agents, representatives,
7 attorneys, accountants, auditors, consultants, insurers, partners, investors, shareholders, administrators,
8 parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers
9 (the “Released Parties”), and shall be permanently barred and enjoined from the institution or prosecution
10 of any and all any and all claims, rights, causes of action, damages, wages, benefits, expenses, penalties,
11 debts, liabilities, demands, obligations, attorneys’ fees, costs, and any other form of relief or remedy in
12 law, equity, or whatever kind of nature, that are alleged, or reasonably could have been alleged based on
13 the factual allegations and the claims asserted in the operative complaint of this Action, including, all
14 claims for unpaid overtime wages, unpaid minimum wages, meal period violations, rest period violations,
15 final wages not timely paid, wages not timely paid during employment, failure to provide accurate wage
16 statements, failure to maintain accurate payroll records, failure to reimburse necessary business expenses,
17 and unlawful business practices under the California Labor Code and/or the California Business and
18 Professions Code, including all claims for restitution or equitable relief, damages, penalties, attorneys’
19 fees and costs, asserted or that might have been asserted by any Settlement Class Member against the
20 Released Parties based on the facts or claims alleged in the Action during the Class Period (the “Settled
21 Class Claims”). (Settlement Agreement ¶ 33, 67).

22 **E. Release of PAGA Claims**

23 Additionally, regardless of whether a PAGA Member timely opts out from this Settlement, each
24 PAGA Member will release the PAGA Claims asserted in this action. (Genish Decl., ¶ 22; Exh. B thereto,
25 Settlement Agreement ¶ 34, 68.) Specifically, upon the funding of the Gross Settlement Amount and all
26 applicable employer-side payroll taxes by Defendant, each and every PAGA Member, on behalf of
27 themselves, their heirs, spouses, executors, administrators, attorneys, agents, and assigns, shall be deemed
28 to have fully, finally and forever released, settled, compromised, relinquished, and discharged any and

all of the Released Parties of and from any and all claims, rights, causes of action, penalties, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law or equity under the California Labor Code Private Attorneys General Act of 2004 that are alleged or reasonably could have been alleged based on the factual allegations and the claims asserted in the operative complaint of this Action and/or the PAGA Notice, including any and all claims, rights, or causes of action for civil penalties, attorneys' fees, and costs pursuant to PAGA, California Labor Code section 2698 *et seq.*, predicated on violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802 and/or of the applicable Industrial Welfare Commission Wage Orders asserted in the Action, asserted or that might have been asserted by any Settlement Class Member against the Released Parties based on the facts or claims alleged in the Action during the PAGA Period (the "Settled PAGA Claims"). (Settlement Agreement ¶ 34, 68.)

IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL

The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether notice to the class was adequate, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

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

The initial evaluation of the settlement at the preliminary approval step "is not a fairness hearing." *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed settlement is within the range of possible approval and, as a result, "whether there is any reason to notify the class members of the proposed settlement and to proceed with a fairness hearing." A presumption of

1 fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and
2 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
3 similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.
4 App. 4th 706, 723 (2006).

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

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

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

14 California courts recognize that "a presumption of fairness exists where . . . [a] settlement is
15 reached through arm's-length bargaining." *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
16 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the parties' settlement negotiations were
17 at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 25). The Settlement was reached
18 following a full day of mediation with a highly respected mediator with substantial experience mediating
19 wage and hour cases. (Genish Decl., ¶¶ 11, 25). Moreover, Plaintiff engaged in additional negotiations
20 in order to finalize the long-form agreement presently before the Court. (Genish Decl., ¶ 12). At all
21 times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if the
22 parties had been unable to reach a favorable resolution. (Genish Decl., ¶¶ 11, 25).

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

24 Courts typically assess the status of discovery in determining whether a class action settlement
25 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. In preparation for mediation,
26 Defendant produced a random sampling of Class Members' time and pay records; Defendant's employee
27 handbooks and relevant wage and hour policies and procedures; information regarding the number of
28 putative class members; the total workweeks and pay periods worked by the Class Members; and the

1 rates of pay for each Class Member. (Genish Decl., ¶ 26). This allowed Plaintiff’s counsel to conduct an
2 informed assessment and analysis of the potential class-wide damages. (Genish Decl., ¶ 26). The Parties
3 extensively briefed issues regarding class certification and liability, and provided their analyses to the
4 mediator who helped the parties debate the strengths and weakness of their respective positions. (Genish
5 Decl., ¶ 26). Additionally, settlement negotiations were conducted by highly capable and experienced
6 counsel. Class Counsel are respected members of the California State Bar with strong records of
7 vigorous and effective advocacy and are experienced in handling complex wage and hour class action
8 litigation. (Genish Decl., ¶¶ 2-8). Accordingly, Class Counsel had sufficient information and experience
9 to act intelligently in negotiating the Settlement.

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

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

20 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
21 factual grounds for defending the action. Based upon Class Counsel’s experience litigating similar
22 complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification
23 and the merits of the action absent a settlement. (Genish Decl., ¶¶ 2-8, 28-39).

24 **1. Class Counsel’s Analysis of the Maximum Available Liability and Damages**

25 Prior to mediation, Class Counsel analyzed a sampling of time and payroll records provided by
26 Defendant and other relevant documents and discovery. (Genish Decl., ¶ 26, 27). Based on the discovery
27 provided, Class Counsel estimated with respect to the class claims, with all claims adjudicated in favor
28 of the Class, that Defendant faced a maximum potential liability of \$4,443,700.00. (Genish Decl., ¶ 27).
This estimate is based off an estimated maximum liability for the primary claims at issue as follows:

1 \$369,600.00 for meal period violations, \$369,600.00 for rest period violations, \$645,150.00 for unpaid
2 wages, \$369,600.00 for unpaid reimbursable business expenses, waiting time penalties of \$1,900.00, and
3 wage statement penalties of \$2,285,250.00. (Genish Decl., ¶ 27). Plaintiff further estimated that
4 Defendant faced an additional exposure of \$402,600.00 in potential PAGA penalties. (Genish Decl., ¶
5 27).

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

7 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
8 recovery existed. Defendant contended that Plaintiff’s claims are not suitable for class certification
9 because individual issues and affirmative defenses would predominate should this case go to trial. *See*
10 *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59
11 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551(2011). While Plaintiff and
12 Class Counsel disagree with Defendant’s predictions, they also recognize that there is a significant risk
13 that the Court may deny class certification. (Genish Decl., ¶¶ 28-30); *see also, Findings of the Study of*
14 *California Class Action Litigation*, 2000-2006, available at [http://www.courts.ca.gov/documents/class-](http://www.courts.ca.gov/documents/class-action-lit-study.pdf)
15 [action-lit-study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf) (finding that only 21.4% of all class actions were certified either as part of a
16 settlement or as part of a contested certification motion).

17 For example, a large portion of Defendant’s overall liability lies in Plaintiff’s meal period claims.
18 These claims have been increasingly difficult to certify in recent years and Defendant contended its
19 practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Plaintiff’s theory of liability for meal period
20 violations was based on allegations that Defendant had failed to implement lawful policies and practices
21 that allowed Class Members to take meal breaks in the manner required under California law. *See*
22 *Bradley v. Networkers Int’l, LLC*, 211 Cal.App.4th 1129 (2012) (holding that “the lack of a meal/rest
23 break policy and uniform failure to authorize such breaks are matters of common proof.”). In contrast,
24 Defendant argued that its practices at all times during the class period were lawful. Defendant argued that
25 the rate of purported meal period violations reflected in the data would require individualized inquiry and
26 that such inquiry would prohibit a class from being certified. Class Counsel disagreed with this
27 assessment but had to consider the risk that the Court would find validity in an individualized proof
28 defense to certification of Plaintiff’s meal period claim. (Genish Decl., ¶ 31).

1 Plaintiff's rest period allegations were based on a similar lack of written policy and failure to
2 provide employees with timely, full, and uninterrupted rest periods. As with the meal period allegations,
3 Defendant contended that it provided rest breaks and relieved Class Members of all duties as required
4 under California law. Additionally, this claim was even more uncertain given the difficulties associated
5 with proving the alleged rest period violations, as Defendant was not required to record these breaks.
6 Given the lack of records demonstrating rest period violations, there were legitimate concerns Plaintiff
7 would not be able to certify these claims or prove substantial damages with requisite certainty. (Genish
8 Decl., ¶ 32).

9 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
10 claims. These claims were largely based on unrecorded, off-the-clock work performed by the Class
11 Members both before and after their shifts and during purported meal periods. As such, the individualized
12 nature of why this work was performed and the individualized nature of damages presented substantial
13 concerns regarding the manageability of the case and the risk the Court could find these issues prevented
14 certification. (Genish Decl., ¶ 33).

15 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
16 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
17 proposition. In order to prove liability and damages, Class Counsel will need to request and analyze
18 thousands of pages of documents, obtain the Class Members' contact information, contact them and
19 obtain their declarations at great expense. Obtaining the cooperation of current employees would also be
20 difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the
21 other hand, Defendant would likely be able to obtain the cooperation of its employees. Moreover, even
22 if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any
23 recovery by the Class. (Genish Decl., ¶ 35).

24 Therefore, taking into account the risk of not obtaining class certification, Class Counsel
25 discounted Defendant's estimated liability by 50%. The merits-based risk factors also reduced
26 Defendant's estimated liability by an additional 40%. This resulted an adjusted estimated liability of
27 \$444,370.00. (Genish Decl., ¶ 38).

1 Class Counsel also separately contemplated the risks of proceeding with the PAGA action and
2 potential liability Defendant could face from this claim. First, Class Counsel recognized that the PAGA
3 claims would be subject to the same defenses and risks as Plaintiff's underlying wage claims. (Genish
4 Decl., ¶ 36); *see, Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008)
5 ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because Plaintiff's other
6 claims fail as a matter of law, so does her PAGA claim"). Moreover, although California case law clearly
7 states that PAGA actions need not satisfy class action requirements, Class Counsel remained mindful of
8 the fact that some courts have nevertheless held that PAGA claims must meet a threshold "manageability"
9 requirement. *See, e.g., Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th 746 (2021). Class
10 Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil
11 penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and
12 oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply
13 with its legal obligations warranting a reduction in penalties. (Genish Decl., ¶¶ 36-37).¹ Class Counsel
14 also anticipate Defendant would argue that it made a good faith attempt to comply with its legal
15 obligations, and that the violations per pay period were low, warranting an additional reduction in civil
16 penalties. (Genish Decl., ¶¶ 36-37). Finally, Class Counsel was also mindful of the fact that PAGA is
17 fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement
18 of California's labor laws by financing state activities and educating and deterring non-compliance.
19 (Genish Decl., ¶ 37).

20 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
21 it was in the best interest of the State of California and the Aggrieved Employees to enter into the
22 Settlement, and to allocate Twenty-Five Thousand Dollars (\$25,000.00) of the Settlement towards the
23

24 ¹ *See, e.g., Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
25 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
26 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the
27 PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
28 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. 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).

PAGA claims, which represents approximately 7.4% of the Gross Settlement Payment. This percentage of the settlement is well-within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Genish Decl., ¶ 38). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the state, and deter future non-compliance by the employer. (Genish Decl., ¶ 38).

In light of the parties’ respective legal positions and the risks of continued litigation, the Gross Settlement Payment for resolution of the class and PAGA claims, is fair, adequate, and reasonable. (Genish Decl., ¶ 40).

VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Code of Civil Procedure Section 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiff contends that this action, which is based upon Defendant’s wage and hour policies and practices, satisfies the class certification requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiff’s allegations, but for purposes of this Settlement only, Defendant has stipulated to certification of the proposed class action.

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

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is defined as “(i) all PAGA Members; and (ii) all individuals who worked for Defendant as hourly-paid

1 and/or non-exempt employees, but excluding those employed as commissioned vehicle salespeople, in
2 the State of California at any time during the Class Period who have not previously released their
3 employment-related claims against Defendant.” (Genish Decl., ¶ 15; Settlement Agreement, ¶ 38). This
4 provides a clear and definite scope for the proposed class.

5 Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity
6 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v. City*
7 *of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard*
8 *v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of 122 individuals meets
9 the numerosity requirement. (Genish Decl., ¶ 15).

10 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
11 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
12 (1967). The existence of an ascertainable class in this case can be established through Defendant’s payroll
13 records, and the class definition is sufficiently specific to enable the parties, potential Class Members and
14 the Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
15 605, 617 (1987).

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

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

21 The commonality criterion requires the existence of common question of law or fact and is
22 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706. What
23 is required is that a common question of fact or law exist which predominates over issues unique to
24 individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
25 from employment—is not a bar to class certification as long as they do not render class litigation
26 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois,*
27 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

28 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class

1 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
2 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
3 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
4 overtime wages, and other related claims. Plaintiff alleges that Defendant's policies and practices were
5 uniform as to all Class Members. Thus, class treatment is appropriate.

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

13 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
14 Plaintiff's claims arise out of the same alleged course of conduct giving rise to the claims of the other
15 Class Members. Because Plaintiff's claims are based upon the same alleged conduct and business
16 practices as those of Class Members, the typicality requirement has been satisfied.

17 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
18 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
19 the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are
20 satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and experienced
21 in employment-related, class-action litigation. (Genish Decl., ¶¶ 2-8). Plaintiff will vigorously,
22 adequately and fairly represent the interests of the class. Plaintiff has at all times throughout the course
23 of the litigation considered the interests of the class and understood that he must take steps to adequately
24 represent the class and their interests. (Analco Decl. ¶¶ 3-5, 8). Because Plaintiff's claims are typical of
25 other Class Members and are not based on unique circumstances, there is no antagonism between the
26 interests of Plaintiff and the Class.

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

28 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,

1 as the class members and the court will derive substantial benefits. Class certification would serve as the
2 only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434
3 (2000) (relevant considerations include the probability that each class member will come forward to prove
4 his or her separate claim and whether the class approach would actually serve to deter and redress the
5 alleged wrongdoing). Further, individual actions arising out of the same operative facts would unduly
6 burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior
7 to individual litigation.

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

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

19 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
20 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation
21 including his own research, reviewing documents, contacting other putative class members to obtain their
22 participation in the action, and extensive discussions with Class Counsel. (Analco Decl. ¶¶ 3-7). Further,
23 the requested amount is also reasonable given the average award and the benefit gained by other Class
24 Members. For these reasons, Plaintiff requests that an enhancement award of \$7,500.00 to Plaintiff be
25 preliminarily approved by the Court. (Genish Decl., ¶ 41; Analco Decl., ¶ 9).

26 **VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

27 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will
28 “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*, 82

1 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees
2 paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases
3 where class members present claims against a common fund and the defendant agrees to a percentage of
4 the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

5 Here, the requested attorneys' fees of \$112,500.00, which is thirty-three percent of the common
6 fund, are disclosed to Class Members in the proposed Class Notice. (Settlement Agreement, Exh. 1). The
7 requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by
8 Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided
9 and will also support Class Counsel's request for the reimbursement of litigation costs not to exceed
10 \$30,000.00. (Genish Decl., ¶¶ 42-44). All costs and fees that are not ultimately approved by the Court
11 shall instead be included in the Net Settlement Fund and distributed to Participating Class Members.
12 (Settlement Agreement, ¶ 43).

13 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
14 **MEETS DUE PROCESS REQUIREMENTS**

15 The parties have jointly drafted a Class Notice which will be delivered to the Class Members.
16 (Settlement Agreement, Exh. 1). The Class Notice will include information regarding the nature of the
17 lawsuit, a summary of the terms of the Settlement, the Class definition, information on how to object and
18 opt-out, and the date of the Final Approval Hearing. (Settlement Agreement, ¶¶ 60, 61, 64). It will list
19 each Class Members' total Workweeks and the estimated Individual Settlement Payment to be paid to
20 the Class Members. (Settlement Agreement, ¶ 59(e)). The Class Notice shall be provided to Class
21 Members in both English and Spanish. (Settlement Agreement, ¶ 59(a)).

22 No later than 30 days after the Court grants preliminary approval of the Settlement, Defendant
23 will provide the a list to the Settlement Administrator containing the following information for each Class
24 Member: full name, last known home address, last known telephone number, social security number, start
25 and end dates of active employment as a non-exempt employee of Defendant in the State of California,
26 total Workweeks during the Class Period, total workweeks worked during the PAGA Period, and any
27 other information required by the Settlement Administrator in order to effectuate the terms of the
28 Settlement ("Class List"). (Settlement Agreement, ¶ 4). The Settlement Administrator shall perform

any searches necessary to confirm Class Members' addresses, and within 14 days of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice to all Class Members via first class mail. (Settlement Agreement, 59(d), (f)). The parties have agreed to use ILYM Group, Inc. as the Settlement Administrator. (Genish Decl., ¶ 45; Settlement Agreement, ¶ 37).

In determining whether to approve a settlement of a class action, a trial court has virtually complete discretion as to the manner of giving notice to class members, and review on appeal is governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which would result in a higher likelihood of actual notice. (Genish Decl., ¶ 46). The original source of the mailing addresses is from Class Members, who provided the information to Defendant. (Genish Decl., ¶ 46). As a fail-safe, additional searches will be performed on any notice returned as non-deliverable. (Genish Decl., ¶ 46, Settlement Agreement, ¶ 59(f)). The Settlement Administrator will report any and all opt outs, objections and disputes. (Settlement Agreement, ¶ 63).

Any Class Members who wish to object to the approval of this Settlement shall provide a signed and dated written statement stating the specific reason for the objection as well as their full name, address, telephone number, and the last 4 digits of their social security number or employee identification number. (Settlement Agreement, ¶ 60). Objections must be mailed to the Settlement Administrator within 60 days following the initial mailing of the Class Notice. (Settlement Agreement, ¶ 32). Class Members may also appear and object at the final approval hearing, regardless of whether they have submitted a written objection. (Settlement Agreement, ¶ 60).

Any Class Members who wish to be excluded from the Settlement must mail the Settlement Administrator a signed and dated written request for exclusion including their name, address, telephone number, and the last 4 digits of their social security number. The request for exclusion must be postmarked no later than 60 days after mailing of the Class Notice. (Settlement Agreement, ¶¶ 32, 61).

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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: July 13, 2022

BLACKSTONE LAW, APC

6
7 By:



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Attorneys for Plaintiff Daniel Analco