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

DANIEL ALCARAZ, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

GRIFOLS BIOLOGICALS INC.; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV42719

[Case Assigned for All Purposes to Hon.
Lawrence P. Riff in Dept. 7]

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

*[Filed concurrently with Declarations of Ari J.
Stiller, Plaintiff Daniel Alcaraz, Jodey
Lawrence, and Proposed Order]*

Date: November 6, 2023

Time: 3:00 PM

Dept.: 7

Complaint Filed: November 19, 2021

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on November 6, 2023 at 3:00 PM in Department 7 of the
3 above-entitled court, Plaintiff DANIEL ALCARAZ will move the Court for an Order of
4 Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a
5 copy of which is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
7 reasonable, and in the best interest of the Class and the Parties.

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declarations of Ari J. Stiller, Plaintiff Daniel Alcaraz, Jodey Lawrence, the
10 Agreement and Release, all other papers and records on file in this action, and on such oral and
11 documentary evidence as may be presented at the hearing on this Motion.

12 DATED: August 17, 2023

KINGSLEY & KINGSLEY, APC

13
14 By: _____

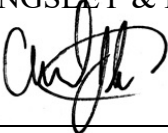

Ari J. Stiller
Attorneys for Plaintiff DANIEL ALCARAZ and the
Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff DANIEL ALCARAZ (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement reached between Plaintiff and Defendant Grifols Biologicals Inc.
6 (“Defendant”). By this Motion, Plaintiff requests that the Court:

7 (1) Grant preliminary approval of the Parties’ Class Action and PAGA Settlement
8 Agreement (“Agreement”). A true and correct copy of the Agreement is attached to the
9 concurrently filed Declaration of Ari J. Stiller as Exhibit 1;

10 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
11 Agreement, and direct that the Notice be sent to Class Members in the manner set forth in the
12 Agreement;

13 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
14 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
15 may be heard (“Final Approval Hearing”).

16 **II. FACTUAL BACKGROUND**

17 **A. Litigation Overview and Procedural History**

18 Grifols Biologicals (“Defendant”) is a pharmaceutical and chemical manufacturer that
19 operates throughout the United States. Plaintiff performed work as a manufacturing technician for
20 Defendant from September 2015 to June 2021. Plaintiff and the Proposed Class worked as non-
21 exempt employees who earned hourly wages, including a shift differential or incentive pay.

22 On November 19, 2021, Plaintiff filed the present lawsuit. (Declaration of Ari J. Stiller
23 “Stiller Decl.” ¶3.) He alleged six causes of action, including meal and rest break violations, failure
24 to reimburse expenses, wage statement violations, untimely payment of final wages, and penalties
25 pursuant to Business & Professions Code section 17200. (Stiller Decl. ¶4.) Also on November 19,
26 2021, Plaintiff provided written notice to the Labor and Workforce Development Agency
27 (“LWDA”) and Defendant setting forth his intent to pursue claims pursuant to Labor Code section
28 2699, et seq. (“PAGA”) for these same violations. (Stiller Decl. ¶5.) Plaintiff’s core theory of

1 liability was that Defendant failed to blend shift differential pay into the “regular rate of
2 compensation” for meal-and-rest-period premium wages, resulting in an underpayment according
3 to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.

4 Plaintiff filed a First Amended Class and Representative Action Complaint on January 24,
5 2022, adding an additional cause of action under PAGA based on the same Labor Code violations
6 at issue in the Complaint, and limiting the Proposed Class to all non-exempt employees working
7 for Defendant from December 7, 2018 to the present (hereafter, the “Lawsuit” or “Operative
8 Complaint”) (Stiller Decl. ¶6.)

9 After engaging in written discovery and Plaintiff’s deposition, the Parties filed a Stipulation
10 Re: Class Certification and Striking of Remaining Class Allegations, certifying Plaintiff’s waiting
11 time penalties claim under Labor Code section 203 and striking Plaintiff’s remaining proposed
12 class allegations, leaving only the certified waiting time penalties claim, Plaintiff’s individual
13 claims, and the PAGA claim based on waiting time penalties. (Stiller Decl. ¶7.) The rationale for
14 this stipulation was that Grifols had retroactively repaid meal and rest period premium wages at
15 the blended rate, leaving only a claim for waiting time penalties on behalf of those workers who
16 had left their job without having been repaid within three days of separation/termination, as
17 required by Labor Code section 203. (Stiller Decl. ¶ 8.)

18 B. The Discovery Process

19 The Parties have engaged in significant discovery. Prior to negotiating the Settlement and
20 reaching the stipulation to narrow the case, Plaintiff obtained, through formal discovery,
21 Plaintiff’s personnel file; timekeeping and pay records for Plaintiff, the Class and Aggrieved
22 Employees; relevant policy documents for Defendant’s bonus programs that gave rise to the
23 allegations at issue in the settlement; and the total number of Class Members. (Stiller Decl. ¶9.)
24 Defendant also deposed Plaintiff Alcaraz, and Plaintiff’s counsel received additional informal
25 discovery for settlement purposes, including pay records for the former employees who Plaintiff
26 alleged to have claims for waiting time penalties, as well as a description of the number of
27 employees affected by the alleged violation at different times. (Stiller Decl. ¶10.)

28 Defendant denies any liability or wrongdoing associated with the claims alleged in the

1 Action, disputes the damages and penalties, and further contends that, for any purpose other than
2 settlement, Plaintiff's claims are not appropriate for class or representative action treatment.
3 (Stiller Decl. ¶11.) Defendant contends, among other things, that, at all times, it has complied with
4 the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*)

5 Based on their own independent investigation and evaluation, Class Counsel is of the
6 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
7 of the settlement classes in light of all known facts and circumstances, including the risk of
8 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
9 representative action trial on the merits, and numerous potential appellate issues. (Stiller Decl.
10 ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
11 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,
12 and forever settle, compromise and discharge all disputes and claims arising from or relating to
13 the Action on the terms set forth here. (*Id.*)

14 **III. THE PROPOSED SETTLEMENT**

15 **A. The Settlement Class**

16 For purposes of Agreement, the Settlement Class is defined as: "all former non-exempt
17 employees of Defendant in California who earned incentive compensation and meal or rest
18 premiums in the same workweek and who left employment with Defendant at any point from July
19 15, 2021 to March 25, 2022." (Stiller Decl. ¶13.) The Class Period is November 19, 2018 through
20 the date of preliminary approval. (Stiller Decl. ¶14; Ex. 1 at ¶1.12.) Based on documents and other
21 information produced by Defendant, there are approximately 40 Settlement Class Members.
22 (Stiller Decl. ¶15; Ex. 1 at ¶4.1.)

23 **B. The Aggrieved Employees**

24 For purposes of the Agreement, the Aggrieved Employees are defined as: "all former non-
25 exempt employees of Defendant in California who earned incentive compensation and meal or rest
26 premiums in the same workweek and who left employment with Defendant at any point from July
27 15, 2021 to March 25, 2022." (Stiller Decl. ¶16; Settlement, Ex. 1 at ¶1.4.) The PAGA Period is
28 November 19, 2020 through preliminary approval. (Stiller Decl. ¶17; Ex. 1 at ¶1.31.) Based on

documents and other information produced by Defendant, there are approximately 40 PAGA Members. (Stiller Decl. ¶18, Ex. 1 at ¶4.1.)

C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$105,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, the Class Representative Service Payment, and the Administrator's Expenses. (Stiller Decl. ¶19; Ex. 1 at ¶1.22.)

The Net Settlement Amount is the Gross Settlement Amount, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Stiller Decl. ¶20; Ex. 1 at ¶1.28.)

The Parties estimate the Net Settlement Amount as follows:

Gross Settlement Amount:	\$	105,000.00
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	35,000.00
Less Class Counsel's Costs:	\$	9,600.00
Less PAGA Payment:	\$	10,000.00
		<i>(\$7,500.00 to the LWDA and \$2,500.00 to Aggrieved Employees)</i>
<u>Less Administrator Costs:</u>	<u>\$</u>	<u>5,500.00</u>
Anticipated Net Settlement Amount	\$	39,900.00

(Ex. 1 at ¶3.)

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount based on the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at ¶3.2.4; *see also* Ex. A to the Agreement [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at ¶3.2.4; *Id.* at Ex. A to the Agreement [Class Notice].) The Agreement provides for a Workweek dispute process. (*See* Ex. 1 at ¶7.6.)

One-hundred percent (100%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for penalties and any other non-taxable

1 items. (Ex. 1 at ¶3.2.4.1.)

2 The Individual PAGA Payment shall be determined according to the settlement payment
3 formula set forth in the Agreement (*See* Ex. 1 at ¶3.2.5.1.)

4 E. Process for Administering Settlement after Preliminary Approval

5 The detailed Notice Procedure established by the Agreement will efficiently and accurately
6 ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶7.4.) The Parties have
7 agreed to use a reputable third-party claims administrator, Phoenix Settlement Administrators, to
8 administer the Agreement. (Ex. 1 at ¶7.1.)

9 F. Process for Settlement Class Members to Respond to Class Notice

10 Settlement Class Members will have an opportunity to request exclusion from the
11 Settlement Class (i.e., opt out) and to object to the Settlement either in writing or at the Final
12 Approval Hearing. (Ex. 1 at ¶7.5, 7.7.) Settlement Class Members who do not opt out may object
13 to the Agreement by mailing written objections to the Administrator no later than sixty (60)
14 calendar days after the mailing of the Notice Packet or by appearing at the Final Approval Hearing.
15 (Ex. 1 at ¶7.7.2.)

16 G. The Release

17 The Released Claims by Participating Settlement Class Members are defined as: “all
18 claims that were alleged, or reasonably could have been alleged, based on the Settlement Class
19 Period facts for waiting time penalties under Labor Code section 203 as stated in the Operative
20 Complaint, including any associated wage statement penalties, penalties under the Private
21 Attorneys General Act (“PAGA”), and claims for restitution or other relief available under
22 California Business and Professions Code sections 17200, et seq.” (Ex. 1 at ¶5.2.) The Released
23 Claims by Aggrieved Employees are defined as: “all claims for PAGA penalties that were alleged,
24 or reasonably could have been alleged, based on the PAGA Period facts for waiting time penalties
25 under Labor Code section 203 stated in the Operative Complaint and PAGA notice letter to the
26 LWDA.” (Ex. 1 at ¶5.3.)

27 **IV. ARGUMENT**

28 A. Plaintiff Requests Approval of This Class Action Settlement

1 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, sets forth
2 several factors that the Court should analyze in determining whether to approve a class action
3 settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
4 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
5 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
6 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
7 participant; and (8) the reaction of the class members to the proposed settlement.

8 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
9 formal and informal discovery before entering into meaningful settlement negotiations in this
10 matter. (Stiller Decl. ¶¶21-22.) This discovery permitted Class Counsel to fairly evaluate the
11 strength of the case and the risks associated with ongoing litigation. (Stiller Decl. ¶23.) Class
12 Counsel is experienced in handling wage and hour class actions and, after weighing all of the
13 following factors, supports this Agreement. (Stiller Decl. ¶24.)

14 1. The Strength of Plaintiff’s Case

15 This case started out alleging that Defendant failed to compensate employees for meal
16 and rest period premium wages at the “regular rate of compensation,” as required by *Ferra v.*
17 *Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. Plaintiff claimed that Defendant failed to
18 blend incentive compensation into the regular rate. (Stiller Decl. ¶ 25.) In the course of litigation,
19 Defendant revealed that, in March 2022, it made retroactive payments to compensate employees
20 at the higher blended rate that Plaintiff alleges was owed. (Stiller Decl. ¶26.) The only remaining
21 issue was whether Defendant was liable for waiting time penalties under Labor Code section 203
22 for not *timely* compensating the workers who had already left their employment by the time the
23 retro payments issued. (Stiller Decl. ¶ 27.) The former employees who received retro pay for
24 meal and rest periods at the blended rate consists of approximately 40 people according to
25 Defendant’s records—a small subset of the original class. (Stiller Decl. ¶28.)

26 a) The Risks Associated with the Waiting Time Penalty Claim

27 This claim alleges that Defendant failed to pay all wages due upon termination or
28 resignation by not timely compensating former employees for meal and rest period premium

1 wages under *Ferra*. Labor Code section 203(a) provides:

2 If an employer willfully fails to pay ... any wages of an employee
3 who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until
paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

5 Under Labor Code section 203, a “‘willful’ failure to pay wages ... occurs when an
6 employer intentionally fails to pay wages to an employee when those wages are due.” (Cal. Code
7 Regs., tit. 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859
8 [“willful” simply means that “the employer intentionally failed or refused to perform an act which
9 was required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice
10 or wrong toward the other party”].)

11 Here, Plaintiff contends that Defendant failed to pay a group of former employees the
12 amounts owed for meal and rest period premium wages within the time periods prescribed by
13 Section 203 because it took eight months after *Ferra* to issue retro payments, and the Settlement
14 Class consists of people who left their positions before the retro payments issued. (Stiller Decl.
15 ¶29.) The California Supreme Court decided *Ferra* on July 15, 2021 and Defendant issued retro
16 payments on March 25, 2022. (Stiller Decl. ¶ 30.) Defendant asserts that any alleged nonpayment
17 at the time of termination could not be “wilfull” because Defendant took a reasonable time after
18 *Ferra* to determine the wages owed, and then promptly paid those wages when the calculations
19 were complete. Plaintiff, on the other hand, argues that eight months taken to issue retro payments
20 is unreasonable and that there are thus triable issues of whether the delayed payment for employees
21 who left their jobs after *Ferra* was wilfull. (Stiller Decl. ¶ 31.)

22 This claim presented significant risk because, to prevail on it, Plaintiff would need to prove
23 both that the underlying wages were owed and that the delayed payment was wilfull based on the
24 time taken for Defendant to issue retro payments after *Ferra*. Plaintiff recognized risk from
25 Defendant’s argument that it possessed a good faith belief that the wages were not owed until
26 *Ferra* was decided, and after that point, it acted diligently to complete retroactive payments.
27 (Stiller Decl. ¶ 32.)

28 Defendant also argued that the text of Labor Code section 203 establishes a penalty that

1 starts upon termination or within three days of resignation, but that only continues until the
2 underlying wages are paid “or until an action therefor is commenced....” (Lab. Code § 203.)
3 Defendant argued that the class’s right to recover waiting time penalties cut off upon the filing of
4 this action on November 19, 2021. (See, e.g., *Triad Data Services, Inc. v. Jackson* (1984) 153
5 Cal.App.3d Supp. 1 [“penalty wages as provided under the Labor Code are cut off . . . when such
6 action is filed with a competent court”]; *Medrano v. D’Arrigo Bros. Co.* (N.D. Cal. Mar. 17, 2004)
7 2004 U.S. Dist. LEXIS 4807, *20 [in a class action, “waiting time penalties are applicable to any
8 employees who were permanently discharged after the Morillon decision and *before this suit was*
9 *filed....*”].) Plaintiff disagrees with the *Medrino* analysis and that the filing of this lawsuit cut off
10 waiting time penalties as to absent class members. There are no published cases cutting off 203
11 penalties of class members when a class action for the underlying wages is commenced. Putative
12 class members still have the right to initiate their own actions and to opt out of any class after the
13 case is filed, so the cutoff would not apply to them—and the PAGA penalties continue regardless.
14 (Stiller Decl. ¶ 33.) Despite disagreeing with Defendant’s position, Plaintiff still recognized the
15 significant risk posed by its arguments. (Stiller Decl. ¶ 34.)

16 b) The Risks Associated with the PAGA Claim

17 Plaintiff also perceived risk in continuing with his PAGA claim. California’s Private
18 Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits private litigants to recover
19 civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may recover any
20 civil penalties specified in an underlying statute (section 2699(a)) or, if none are established,
21 plaintiffs may recover default penalties provided in section 2699(f) in the amount of \$100 per
22 employee per pay period for the initial violation and \$200 for subsequent violations.

23 The Parties discounted the PAGA claim for multiple reasons. First, the PAGA claim asserts
24 the same 203 violation as the previously discussed class claims. The same risk on the merits that
25 justifies a settlement of the class 203 claims also supports settlement of PAGA. The 203 claim
26 itself was derivative of an underlying wage claim. It is uncertain whether the Court would award
27 significant PAGA penalties supported only by a derivative violation.

28 Second, a court has discretion to award less than the maximum penalty. Labor Code §

2699(e)(2) provides that “a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2); see e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for these violations in the proposed Agreement, and thus the Court may see any PAGA recovery for these same violations as duplicative. The Agreement’s contemplated PAGA payment of \$10,000.00 is appropriate. (Stiller Decl. ¶35; see *Nordstrom Commissions Cases* (2010) 186 Cal.App.4th 576, 589 [affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties].)

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

Even though the Court granted class certification on October 21, 2022, trial of a case involving over 40 Settlement Class Members would require extensive litigation costs, and a significant time investment by the parties. (Stiller Decl. ¶36.) Given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal, further delaying any relief to the class. (Stiller Decl. ¶37.)

3. The Risk of Maintaining Class Action Status through Trial

Plaintiff does not believe that decertification is likely. (Stiller Decl. ¶38.)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$105,000.00. (Stiller Decl. ¶39.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Stiller Decl. ¶40.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

a) Plaintiff’s Assessment of Defendant’s Maximum Exposure

Plaintiff valued the Waiting Time Claim at \$271,224.98. (Stiller Decl. ¶41.) Plaintiff determined that accepting a discount on this claim was appropriate because, if the Court accepted Defendant’s “good faith belief” defense, the class would recover nothing. (Stiller Decl. ¶42.)

1 Finally, Plaintiff calculated the value of the PAGA claim at \$237,900 for Settlement Class
2 Members (using \$100 per pay period). (Stiller Decl. ¶43.) The main risk taken into account with
3 PAGA is the discretionary nature of the penalty award. (Stiller Decl. ¶44.) A judge can award the
4 statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent
5 per wage statement. (Stiller Decl. ¶45.) While there is a dearth of available authority, in Plaintiff’s
6 view, were he to succeed on the underlying Labor Code 203 violation, it is not likely that the Court
7 would also award a large amount of penalties of top of any 203 penalties, which are themselves
8 derivative of the underlying wage violation. (Stiller Decl. ¶46.)

9 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the
10 Settlement Class Members’ and Aggrieved Employees’ claims was approximately \$509,124.98.
11 (Stiller Decl. ¶47.) However, as a result of the forgoing risks on the merits, Class Counsel believes
12 the Gross Settlement Amount of \$105,000.00 is fair and reasonable. (Stiller Decl. ¶48.)

13 5. The Experience and Views of Counsel

14 Finally, counsel’s experience and success in similar class actions also weigh in favor of
15 preliminary approval. (See *Wershba, supra*, 91 Cal.App.4th at 245.) Kingsley & Kingsley, APC
16 is experienced in prosecuting complex employment litigation, and the firm has focused its practice
17 since the year 2000 on complex wage, hour, and working condition violations. (Stiller Decl. ¶¶49-
18 51.) The firm is well versed in class action litigation and has diligently and aggressively pursued
19 this action. (*Id.*) Kingsley & Kingsley currently serves as Class Counsel for dozens of pending
20 class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative
21 cases that Kingsley & Kingsley has handled is included in the accompanying declaration of Ari J.
22 Stiller. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed
23 settlement is fair and reasonable. (Stiller Decl. ¶52.)

24 6. The Proposed Plan of Allocation Is Fair and Reasonable

25 Plans of allocation are subject to the same standard of review as class action settlements;
26 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
27 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
28 compensates Settlement Class Members pro rata based on the number of compensable Workweeks

1 worked by the Settlement Class Member during the Class Period. The lump sum payment to each
2 Settlement Class Member not excluding him/ herself will be determined on an individualized basis
3 based upon the Workweeks worked by the Settlement Class Member. (Ex. 1 at ¶3.2.4.) This
4 allocation distributes funds proportionally to each class member’s potential damages and should
5 therefore be approved as fair, adequate, and reasonable. (Stiller Decl. ¶53.)

6 7. The Proposed Notice Fairly Apprises the Settlement Class Members of the
7 Terms of the Settlement and of the Class Members’ Rights under the
8 Settlement

9 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
10 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
11 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
12 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address
13 of all Settlement Class Members, or to an updated address if one is located in the National Change
14 of Address Database. (Ex. 1 at ¶7.4.3.) If any Notices are returned as undeliverable, the
15 Administrator will undertake another reasonable address verification measure to locate a valid
16 mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice
17 is likely to reach most, if not all, Settlement Class Members.

18 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
19 the class members of the terms of the proposed compromise and of the options open to dissenting
20 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)
21 The purpose of a class notice is to give class members sufficient information to decide whether
22 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
23 settlement. (*Ibid.*)

24 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
25 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶7.5; 7.7; *see also* Ex. A to the
26 Agreement at pp. 1-2, 4 [Class Notice].) In short, the Court should approve the proposed Class
27 Notice because it describes the proposed settlement with enough specificity to allow Settlement
28 Class Members to make an informed choice regarding whether to participate.

1 **V. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

2 The Class Representative is entitled to an enhancement for his effort and time expended in
3 this matter. (Stiller Decl. ¶54.) The time spent by Daniel Alcaraz is significant and includes
4 researching and retaining competent counsel; providing information to Class Counsel regarding
5 the nature of the work at Defendant; compiling relevant documents; working closely with Class
6 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
7 status of the case with Class Counsel; discussing the case via telephone with many Settlement
8 Class Members; providing formal discovery responses; sitting for his deposition; and responding
9 promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the
10 sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in
11 the amount of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set
12 forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to
13 Civil Code Section 1542. (Stiller Decl. ¶55; Ex. 1 at ¶5.1.1.)

14 Class Counsel considers this to be a fair and reasonable enhancement. (Stiller Decl. ¶56.)
15 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
16 coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff
17 will provide a detailed declaration with the Final Approval Motion detailing his participation and
18 further justification for the enhancement. (*Id.*)

19 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

20 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action
21 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
22 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
23 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
24 confirming receipt is attached to the Declaration of Ari J. Stiller as Exhibit “2.” (Stiller Decl. ¶57.)

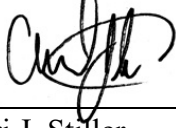
25 **VII. CONCLUSION**

26 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
27 and in the best interest of the Settlement Class Members. Therefore, the Parties respectfully
28 request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement

1 Agreement, and all of its terms; (2) approve the proposed form of notice, and direct that the Notice
2 be sent to Settlement Class Members in the manner set forth in the Class Action and PAGA
3 Settlement Agreement; and (3) schedule a hearing on final approval of the Agreement and Class
4 Counsel's application for an award of attorney's fees and litigation costs.

5
6 DATED: August 17, 2023

KINGSLEY & KINGSLEY, APC

7
8 By: 

Ari J. Stiller

9 Attorneys for Plaintiff DANIEL ALCARAZ and the
10 proposed class
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On August 17, 2023, I served all interested parties in this action the following documents described as: **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Daniel J. McQueen, Esq.
Nora K. Stilestein, Esq.
Tyler J. Johnson, Esq.
dmcqueen@sheppardmullin.com
nstilestein@sheppardmullin.com
tjjohnson@sheppardmullin.com
SHEPPARD MULLIN RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA, 90071-1422

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 17, 2023, at Woodland Hills, California.



Michelle Tanzer