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behalf of themselves and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

RYAN CHANLEY on behalf of himself
and all similarly situated employees

Plaintiff,

vs.

GROWERS TRANSPLANTING, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22CV002837

(Assigned to the Honorable Thomas W. Wills,
Dept. 15)

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

Date: March 22, 2024

Time: 8:30 a.m.

Dept: 15

Action Filed: September 22, 2022

Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on March 22, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard, before the Honorable Thomas W. Wills in Department 15 of the
4 above-referenced Court, located at 1200 Aguajito Road, Monterey, California 93940, Plaintiffs
5 Ryan Chanley, Olivier Lara, Veronica Medina, and Celia Orozco (together, “Plaintiffs”) will
6 and hereby move this Court for the following relief with respect to the Joint Stipulation of
7 Class Action and PAGA Settlement (“Agreement” or “Settlement Agreement”) entered into by
8 Plaintiffs and Defendants Growers Transplanting, Inc. and Nor-West, Inc. (together,
9 “Defendants”) (collectively with Plaintiffs, the “Parties”):

- 10 1. That the Court approve the Agreement referenced above;
- 11 2. That the Court certify the following Class for settlement purposes: all current
12 and former non-exempt employees of GTI who were employed in the State of California at
13 any time during the Class Period and all current and former non-exempt employees of Nor-
14 West who were assigned to work at GTI during the Class Period (the period commencing on
15 June 24, 2020, and ending January 22, 2024) (the “Class”);
- 16 3. That Plaintiffs Ryan Chanley, Olivier Lara, Veronica Medina, and Celia Orozco
17 be appointed as the Class Representatives and B. James Fitzpatrick, Alison L. Baker, and
18 Laura L. Franklin of Fitzpatrick & Swanston and Howard L. Magee, Larry W. Lee, Max W.
19 Gavron, and Christine S. Lee of Diversity Law Group, P.C. be appointed as Class Counsel;
- 20 4. That the Court preliminarily approve the Agreement and the Gross Settlement
21 Amount in the amount of Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00);
- 22 5. That the Court finds on a preliminary basis that the Agreement appears to be
23 within the range of reasonableness of a settlement, including the amount of the PAGA
24 penalties, Class Representative service award, attorneys’ fees and costs, settlement
25 administration costs, and the allocation of payments to Participating Class Members, that
26 could ultimately be given final approval by this Court;
- 27 6. That the Court approve the mailing of the proposed Notice of Pendency of Class
28 Action and Proposed Settlement, also referred to as the “Notice of Class Action Settlement” or

1 “Class Notice,” to be sent to Class Members;

2 7. That the Court appoint Phoenix Settlement Administrators as the Settlement
3 Administrator; and

4 8. That the Court schedule the matter for a Final Fairness and Final Approval
5 hearing.

6 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
7 provides for court approval of the settlement of a purported class action and allows the Court
8 to preliminarily certify a class for settlement purposes.

9 The basis for this Motion, filed without any opposition from Defendants, is that the
10 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the
11 Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of,
12 or object to the settlement.

13 This Motion will be based on the attached Memorandum of Points and Authorities, the
14 Settlement Agreement and the proposed Class Notice, and the supporting Declarations of B.
15 James Fitzpatrick, Howard L. Magee, Larry W. Lee, Max W. Gavron, Christine S. Lee, Ryan
16 Chanley, Olivier Lara, Veronica Medina, and Celia Orozco, upon the oral arguments of
17 counsel (should there be any), and on the complete records and file herein.

18
19 DATED: March 1, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

21 By: 
22 B. James Fitzpatrick
23 Howard L. Magee
24 Larry W. Lee
25 Max W. Gavron
26 Attorneys for Plaintiffs Ryan Chanley, Olivier
27 Lara, Veronica Medina, and Celia Orozco
28

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action arising from various alleged Labor Code violations by Defendants Growers
4 Transplanting, Inc. and Nor-West, Inc. (together, “Defendants”). Plaintiffs Ryan Chanley,
5 Olivier Lara, Veronica Medina, and Celia Orozco (together, “Plaintiffs”) allege that
6 Defendants failed to provide proper meal and rest breaks, pay hourly and overtime wages
7 when due and upon separation of employment, reimburse business expenses, and provide
8 accurate wage statements to employees. Based on these allegations, Plaintiffs assert class and
9 PAGA claims for violation of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216,
10 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198,
11 1199, 2699, 2800, 2802, 2698, *et seq.*, and Business and Professions Code § 17200, *et seq.*
12 (the “UCL”). Plaintiffs and Defendants (collectively, the “Parties”) have reached a class and
13 PAGA action settlement, the terms of which are reflected in the Parties’ Joint Stipulation of
14 Class Action and PAGA Settlement¹ (“Agreement” or “Settlement Agreement”).

15 Prior to the settlement of this action, the Parties investigated the facts relating to the
16 class and PAGA claims alleged in the lawsuit and engaged in a thorough study of the legal
17 principles applicable to the claims asserted against Defendants. Through the exchange of
18 informal discovery, Defendants provided necessary data pertaining to the number of putative
19 class members and aggrieved employees and the number of pay periods at issue, sample wage
20 statements and time records, as well as documents pertaining to Defendants’ policies regarding
21 the payment of meal and rest period premiums, business reimbursements, and COVID health
22 checks. The information provided by Defendants allowed Plaintiffs to review and analyze the
23 liability and potential exposure. The Parties also participated in two, separate full-day
24 mediations with experienced neutrals Mark S. Rudy, Esq. and Michael Loeb, Esq., after which
25 the Parties were able to reach the current settlement. The following represents the key terms of

26
27

¹ A true and correct copy of the Joint Stipulation of Class Action and PAGA Settlement is
28 attached as **Exhibit A** to the Declaration of Max W. Gavron (“Gavron Decl.”) submitted
 concurrently herewith.

the settlement:

- Gross Settlement Amount of \$700,000.00, which will be paid by Defendants and distributed to the Class on a **non-reversionary basis, such that no monies will revert to Defendants** (Agreement ¶¶ 15, 63);
- Class size of 1,731 individuals (*Id.* ¶ 3);
- Class Members do not need to submit claim forms to participate in the settlement;
- Service Awards of up to \$5,000.00 to each Plaintiff for their efforts in prosecuting this action on behalf of other Class Members and in consideration for providing a general release of claims (*Id.* ¶¶ 71, 72);
- Class Counsel’s attorneys’ fees of up to one-third of the Gross Settlement Amount, or up to \$233,333.33 (*Id.* ¶ 5);
- Class Counsel’s litigation costs of up to \$35,000.00 (*Id.* ¶ 5);
- Settlement Administration Costs of up to \$17,950.00 (*Id.* ¶ 37);
- Payment to the Labor and Workforce Development Agency of \$37,500.00, representing 75% of the total PAGA Penalties of \$50,000.00 (*Id.* ¶ 27);
- The remaining 25% of the PAGA Penalties of \$50,000.00, or \$12,500.00, to be distributed to PAGA Members² on a pro rata basis, based on the number of weeks worked during the PAGA Period (*Id.* ¶ 47.e.iv);
- Net Distribution Fund of approximately \$343,717.67 (*Id.* ¶¶ 5, 15, 20, 27, 37, 47.e.i); and
- Raw average of at least \$198.57 to each Participating Class Member.

The Parties believe that this amount is fair, adequate, and reasonable, in light of all known circumstances and the risks and expenses inherent in litigation. Although Plaintiffs and their counsel are confident that they could prevail on class certification and on the merits of the claims, they recognize the inherent risks in drawn-out litigation and the specific risks that a

² Pursuant to the Settlement Agreement, PAGA Members consist of “all Class Members employed by GTI or Nor-West during the PAGA Period.” Agreement ¶ 25. The PAGA Period is “the period commencing on September 22, 2021, and ending on January 22, 2024.” *Id.* ¶ 28.

1 class might not be certified and/or that Plaintiffs could fail to establish liability. Based on their
2 own independent investigation and evaluation, the Parties and their respective counsel are of
3 the opinion that the settlement for the consideration and on the terms set forth in the
4 Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Class
5 and Defendants. Therefore, the Parties respectfully request that the Court grant this Motion for
6 Preliminary Approval of Class Action Settlement.

7 **II. PROCEDURAL HISTORY**

8 Plaintiffs were employed by Defendant Growers Transplanting, Inc. (“GTI”) and its
9 labor contractor Nor-West, Inc. (“Nor-West”). Plaintiffs allege that they were subjected to
10 various Labor Code violations during their employment.

11 **A. The Allegations Set Forth in the PAGA Notices and the Operative** 12 **Complaint**

13 On November 10, 2021, Ryan Chanley (“Chanley”) submitted written notice to the
14 Labor and Workforce Development Agency (“LWDA”), alleging violations by GTI of Labor
15 Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226,
16 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, and 2802, pursuant
17 to the PAGA, Labor Code § 2699. Gavron Decl. ¶ 2.

18 On September 22, 2022, Chanley filed a class and representative action complaint
19 against GTI in the Superior Court of California, County of Monterey (the “Action”). *Id.* ¶ 3.
20 Chanley also alleged a disability discrimination claim against GTI under the Fair Employment
21 Housing Act (“FEHA”) entitled *Ryan Chanley v. Growers Transplanting, Inc.*, Case No.
22 22CV000069, which was separately resolved through a confidential settlement agreement. *Id.*
23 ¶3.

24 On March 17, 2023, Chanley submitted a supplemental PAGA notice to the LWDA,
25 adding Nor-West as an employer. *Id.* ¶ 4.

26 On May 25, 2023, Chanley filed a First Amended Complaint, adding Olivier Lara,
27 Veronica Medina, and Celia Orozco as named plaintiffs and Nor-West as an additional
28 defendant to the Action. Gavron Decl. ¶ 5. The First Amended Complaint is the operative

complaint (“Complaint”). The Complaint asserts claims on behalf of all Plaintiffs and the Class for: (1) failure to provide meal periods or compensation in lieu thereof, in violation of California Labor Code §§ 226.7 and 1198; (2) failure to provide rest periods or compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 1198; (3) failure to pay hourly and overtime wages, in violation of Labor Code §§ 1194 and 1198; (4) failure to comply with itemized employee wage statement requirements, in violation of Labor Code §§ 226, 1174, and 1175; (5) failure to pay all wages upon termination, in violation of Labor Code §§ 201, 202, and 203; (6) violation of Labor Code § 2802; (7) violation of Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”); and (8) unfair business practices, in violation of Business and Professions Code § 17200, *et seq. Id.* ¶ 6.

B. Mediation

After Chanley initiated the Action, the Parties agreed to participate in private mediation. In connection with mediation, the Parties exchanged informal discovery sufficient to allow the Parties to assess the claims and liability. Gavron Decl. ¶ 7.

On February 7, 2023, the Parties engaged in a full day mediation with experienced neutral Mark S. Rudy, Esq. Gavron Decl. ¶ 8. Despite conducting arm’s length negotiations, the Parties were unable to reach an agreement. *Id.* ¶ 8. Thereafter, the Parties resumed litigation.

Following the filing of the operative First Amended Complaint, the Parties agreed to attempt a second mediation. On October 24, 2023, the Parties engaged in a full day mediation with neutral Michael Loeb, Esq. Gavron Decl. ¶ 9.

In connection with the second mediation, Defendants produced necessary data pertaining to the number of putative class members and aggrieved employees and the number of pay periods at issue, wage statements and time records, as well as documents pertaining to Defendants’ policies regarding the payment of meal and rest period premiums, business reimbursements, and COVID health checks. Gavron Decl. ¶ 10. Defendant GTI produced all of the time and pay records for putative class member during the class period for review. However, many of the time and pay records for the putative class members directly hired by

1 Nor-West were kept in a paper format rendering production of the records tedious and time
2 consuming. Accordingly, Nor-West produced a 10% sampling of time and pay records, which
3 Plaintiffs' consultant used to extrapolate a damages model. Gavron Decl. ¶10.

4 As a result of the second mediation, the Parties agreed to settle the Action and entered
5 into a memorandum of understanding. Gavron Decl. ¶ 11. The Parties then worked together to
6 reach a more detailed, formalized settlement agreement to be submitted to the Court for
7 preliminary and final approval.³ *Id.* ¶11.

8 The Parties recognize the risk, expense, and delay in continuing litigation with the
9 class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.
10 Gavron Decl. ¶ 33. Accordingly, the Parties desire to settle, compromise, and discharge all
11 disputes and claims arising from or relating to the afore-referenced claims.

12 **III. DISCUSSION**

13 Any settlement of a class action lawsuit must be reviewed and approved by the Court.
14 This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final
15 review after notice has been distributed to the class members for their comment or objections.
16 The *Manual for Complex Litigation, Third* § 30.41 states:

17 Approval of class action settlements involves a two-step process.
18 First, counsel submits the proposed terms of settlement and the court
19 makes a preliminary fairness evaluation. If the preliminary
20 evaluation of the proposed settlement does not disclose grounds to
21 doubt its fairness or other obvious deficiencies, such as unduly
22 preferential treatment of class representatives or of segments of the
23 class, or excessive compensation for attorneys, and appears to fall
24 within the range of possible approval, the court should direct that
25 notice...be given to the class members of a formal fairness hearing,
26 at which arguments and evidence may be presented in support of
27 and in opposition to the settlement.

28 (Fed. Jud. Ctr., 3rd ed. 1995).

29 Thus, the preliminary approval by the trial court is simply a conditional finding that the
30 settlement appears to be within the range of acceptable settlements. As Professor Newberg
31 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or

³ While not at mediation with Mr. Loeb, Chanley ultimately resolved his individual FEHA action separately through a Confidential Settlement Agreement.

1 conference concerning a tentative settlement proposal may vary. The court may find that the
2 settlement proposal contains some merit, is within the range of reasonableness required for a
3 settlement offer, or is presumptively valid subject only to any objections that may be raised at
4 a final hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th
5 ed. 2002).

6 The procedures for the Parties’ submission of a proposed settlement for preliminary
7 approval by the court also are discussed in *4 Newberg on Class Actions*:

8 When the parties to an action reach a monetary settlement, they will
9 usually prepare and execute a joint stipulation of settlement, which
10 is submitted to the court for preliminary approval. The stipulation
11 should set forth the central terms of the agreement, including but not
limited to, the amount of settlement, form of payment, manner of
determining the effective date of settlement and any recapture
clause.

12 *Id.* § 11.24.

13 Here, the Parties have reached such an agreement and have submitted to this Court in
14 connection with this Motion a copy of the Settlement Agreement fully setting forth the
15 agreement reached by the Parties. The Settlement Agreement sets forth all terms of the
16 agreement reached by the Parties, which include, among other things, the method for
17 calculating the Class Members’ individual portions of the Gross Settlement Amount.

18 **A. Proposed Class Definition**

19 The current settlement is being settled on behalf of “all current and former non-exempt
20 employees of GTI who were employed in the State of California at any time during the Class
21 Period and all current and former non-exempt employees of Nor-West who were assigned to
22 work at GTI during the Class Period (the “Class”).” *See* Agreement ¶ 3. The Class Period is
23 defined as “the period commencing on June 24, 2020, and ending January 22, 2024.” *See*
24 Agreement ¶ 8.

25 Pursuant to the Agreement, Defendants have represented that there are an estimated
26 1,731 individuals that comprise the Class. *See* Agreement ¶ 3.

27 //

1 **B. Settlement Terms and Evaluation**

2 Courts presume the absence of fraud or collusion in the negotiation of settlement
3 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
4 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 682
5 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
6 do not substitute their judgment for that of the proponents, particularly where, as here,
7 settlement has been reached with the participation of experienced counsel familiar with the
8 litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
9 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
10 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
11 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

12 While the recommendations of counsel proposing the settlement are not conclusive, the
13 Court can properly take them into account, particularly where, as here, they have been
14 involved in discovery and negotiations for some period of time, appear to be competent, have
15 experience with this type of litigation, and have exchanged substantial evidence from the
16 opposing party. *See 4 Newberg on Class Actions, supra*, § 11.47; *Nat'l Rural Telecomms.*
17 *Coop.*, 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is
18 preserved, however, a strong initial presumption of fairness attaches to the proposed
19 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
20 are most closely acquainted with the facts of the underlying litigation”).

21 Here, both Plaintiffs’ and Defendants’ counsel have a great deal of experience in wage
22 and hour class action litigation. Plaintiffs’ counsel have been approved as class counsel in a
23 number of wage and hour class actions and have extensive litigation experience. Gavron Decl.
24 ¶¶ 35-41; Declaration of B. James Fitzpatrick (“Fitzpatrick Decl.”) ¶ 4; Declaration of Howard
25 L. Magee (“Magee Decl.”) ¶¶ 4, 5. Declaration of Larry W. Lee (“L. Lee Decl.”) ¶¶ 5-7;
26 Declaration of Christine S. Lee (“C. Lee Decl.”) ¶¶ 5-7. Each side has apprised the other of
27 their respective factual contentions, legal theories, and defenses, resulting in negotiations
28 taking place between the Parties. Gavron Decl. ¶ 32.

1 Based on the class data provided by Defendants, Plaintiffs estimated that Defendants
2 would face potential liability of up to approximately \$13 million for Plaintiffs' class and
3 PAGA claims if Plaintiffs succeeded at trial on all claims. Gavron Decl. ¶ 17. Plaintiffs were
4 able to estimate the potential class penalties based on class data and sample records provided
5 by Defendants. *Id.* ¶ 17. Specifically, this amount was calculated based on the following
6 breakdown for each class claim:

- 7 • \$1.4 million for meal break violations calculated at an approximate 31%⁴ average
8 violation rate;
- 9 • \$1.4 million for rest period violations calculated at an approximate 31% average
10 violation rate;
- 11 • \$70,000 for unpaid for unpaid minimum and overtime wages because of
12 Defendant's alleged underpayment of time spent during COVID;
- 13 • \$1.45 million for derivative Labor Code § 226(e) penalties;
- 14 • \$82,000 premised on Plaintiffs' allegation that, although Defendants had lawful
15 reimbursement policies and their records demonstrated reimbursements were made,
16 Defendants failed to pay enough for the reimbursements they made; and
- 17 • \$7 million maximum exposure in waiting time penalties based on average rate of
18 pay of \$15.00 between Defendants, which was heavily discounted for the reasons
19 that follow.

20 See Gavron Decl. ¶ 17.

21 With respect to potential liability of Plaintiffs' PAGA claims, Plaintiffs estimated that
22 Defendants could face civil penalties of up to approximately \$1.6 million. Gavron Decl. ¶ 18.
23 This amount was calculated based on approximately 16,000 pay periods during the relevant
24 time period and a \$100 penalty per violation, which assumes that the Court would not "stack"
25 PAGA penalties for distinct violations of the Labor Code. *Id.* ¶ 18. Courts have recently been
26 hesitant to award a higher PAGA penalty for "subsequent" violations where there is no prior
27 citation by the Labor Commissioner, which renders the evaluation of the potential PAGA

28 ⁴ The violation rate was deduced from analysis of the records provided by Defendants. Gavron Decl. ¶ 15.

penalties without “stacking” reasonable. *C.f. Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (“Virgin was not notified by the Labor Commissioner or any court that it was subject to the California Labor Code until the district court partially granted Plaintiffs’ motion for summary judgment. On this basis, we reverse the district court’s holding that Virgin is subject to heightened penalties for any labor code violation that occurred prior to that point.”). While *Bernstein* addresses whether the higher subsequent penalty should be applied, defendants often argue that this decision supports their position that the court should not award multiple penalties for different predicate violations of the Labor Code during the same pay period. Accordingly, evaluating the settlement compared to a potential penalty of \$100 per pay period is fair, adequate, and reasonable.

These maximum exposures above were discounted for purposes of evaluating the settlement for various reasons.

Discount Factors for Class Claims: Outside of substantive arguments regarding the claims presented, Defendants argued that a portion of the putative class had signed arbitration agreements, which precluded class claims altogether. Gavron Decl. ¶ 19. Furthermore, a portion of the putative class signed severance agreements, which Defendants contended precluded any claim at all. Gavron Decl. ¶ 19. Substantively, Defendants also asserted several defenses to Plaintiffs’ claims. For example, Plaintiffs alleged that employees were not properly paid for time spent undergoing COVID temperature checks. Gavron Decl. ¶ 19. However, Defendants argued that: 1) they paid employees for the time spent during COVID screenings; and 2) even if Plaintiffs’ could prevail on this theory, the time period during which employees were required to undergo temperature checks was limited thus limiting the potential exposure during the class period. Gavron Decl. ¶19. Review of Defendants’ records demonstrated that they were paying employees for time spent during COVID screenings; however, Plaintiffs disputed that the amount paid was sufficient. Gavron Decl. ¶ 19.

With respect to Plaintiffs’ meal and rest period claims, Defendants maintained facially compliant policies, which they argued would preclude class certification. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) (“On the other hand,

1 the employer is not obligated to police meal breaks and ensure no work thereafter is
2 performed.”). Defendants argued that their policies satisfied *Brinker* and that any failure to
3 take a legally compliant meal or rest period by employees was the result of individual choice
4 and thus not capable of class resolution. Defendants also disputed that they controlled
5 employees during meal or rest periods.

6 Defendants would have argued that the waiting time penalties, which comprise a
7 significant portion of the estimated damages, are subject to a complete defense. Defendants
8 would have argued that a good faith dispute exists as to whether the allegedly underpaid wages
9 were due to Plaintiffs and the class members considering Defendants’ legally compliant
10 policies and that Defendants paid employees for the time spent undergoing COVID
11 temperature checks. If Defendants were successful on the good faith defense, the Court may
12 not have awarded waiting time penalties at all, reducing the exposure by approximately \$7
13 million on the class claims. *Hill v. Walmart, Inc.*, 32 F. 4th 811 (9th Cir. 2022) (upholding
14 good faith defense because defendant reasonably believed wages were not due and owing at
15 time of separation of employment); *Naranjo v. Spectrum Security Services, Inc.*, __ Cal. Rptr.
16 3d __, 2023 WL 2261253 (Feb. 27, 2023), review granted 2023 WL 3745105 (May 31, 2023);
17 *Chavez v. Converse, Inc.*, 2020 WL 1233919, at *1 (N.D. Cal. 2020) (holding that an
18 employer’s failure to pay is not willful where there is uncertainty in the law or a “good faith
19 mistaken belief that wages are not owed”).

20 Similarly, on Plaintiffs’ wage statement claim, Plaintiffs would face the additional
21 burden of demonstrating that any alleged omission of information from the wage statements
22 was a “knowing and intentional failure” by Defendants to comply with Labor Code § 226(a).
23 See *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting
24 summary judgment in favor of employer and finding its conduct was not “knowing and
25 intentional”). Defendant also would have argued that penalties under Section 226 are subject
26 to a similar “good faith” defense as articulated above in the context of Plaintiffs’ claims for
27 waiting time penalties. See, e.g., *Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at
28 *3 (C.D. Cal. June 5, 2014) (“Where an employer has a good faith belief that it is not in

violation of Section 226, any violation is not knowing and intentional.”); *Wright v. Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same); *Ricaldai v. U.S. Investigations Servs., LLC*, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011) (same). *Naranjo* also permitted a good faith defense to rebut the plaintiff’s claim for penalties, pursuant to Labor Code § 226.

Defendants’ records also demonstrated that they routinely reimbursed employees for expenses associated with the use of cellular phones. Accordingly, to the extent that there was any exposure on this claim, Defendants argued that it was not subject to class resolution. Gavron Decl. ¶ 23.

Discount Factors for PAGA Claims: With respect to the PAGA claims, Defendant Nor-West argued that the only Plaintiff directly employed by it was outside the statute of limitations and thus would not be a suitable representative to pursue the PAGA claim against it. Gavron Decl. ¶ 24. Plaintiffs countered that the relation back doctrine would apply to preserve the claim, relying on *Hutcheson v. Superior Ct.*, 74 Cal. App. 5th 932, 940 (2022). *But see Pointe San Diego Residential Cmty., L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP*, 195 Cal.App.4th 265, 279 (2011) (holding relations back only applies where original complaint alleged similar facts). Because Nor-West’s workforce accounted for a larger portion of the pay periods during the PAGA Period, the potential exposure on this claim was discounted when considering settlement.

Even if Plaintiffs were to prevail on the merits of the PAGA claim, the potential recovery is uncertain. Under PAGA, trial courts have considerable discretion to reduce the penalty award. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full amount of PAGA penalties where “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.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at

1 complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal
2 found such reduction to be proper and affirmed a judgment which only provided for a PAGA
3 penalty of \$5 per pay period. *Id.* at 539; *see O'Connor*, 2016 WL 4398271, at *17 (noting that
4 even if PAGA penalties amounted to \$1 billion, such award “could well be reduced, as a court
5 may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary
6 and oppressive, or confiscatory”).

7 Courts routinely award far less than the statutory maximum amount of civil penalties,
8 even where an underlying violation of the Labor Code is found. Just very recently, in the
9 matter of *Magadia v. Wal-Mart Assocs., Inc., et al.*, while the trial court imposed substantial
10 PAGA penalties upon the defendant, such amount still represented reductions of 67% and 80%
11 of the potential PAGA penalties at issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal.
12 May 31, 2019). Moreover, this was only after the plaintiff in *Magadia* had prevailed after trial.
13 Thereafter, the Ninth Circuit reversed the trial court’s ruling, which demonstrates the
14 significant risk presented in moving forward with litigation. *Magadia v. Wal-Mart Assocs.,*
15 *Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).

16 Based on the potential exposure discussed above, the class and PAGA penalties at
17 maximum total approximately \$13 million. However, if the Court were to determine that the
18 Defendants acted in good faith such that the imposition of Section 203 or 226 penalties was
19 not appropriate, the exposure would be reduced to \$4.5 million, and even further reduced if the
20 Court did not award full PAGA penalties for the reasons above. Gavron Decl. ¶ 27. Given
21 these considerations, Plaintiffs’ counsel believes the proposed settlement to be fair, adequate,
22 and reasonable. Gavron Decl. ¶ 27.

23 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the
24 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs
25 involved in not prevailing on one or more of the causes of action or theories alleged in the
26 operative First Amended Complaint at trial, the possibility of non-certification, and the
27 potential for appeals. Gavron Decl. ¶ 28. These risks on class certification are compounded by
28 the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1

1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial
2 after eight years of litigation, but the judgment and the certification ruling were reversed by
3 the California Supreme Court after an additional five years of litigation. The case was
4 remanded to superior court where class certification was denied and plaintiffs' subsequent
5 appeal also was denied.

6 Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the
7 inherent risks of litigation and the costs of pursuing such litigation. The settlement is the result
8 of extensive arm's length negotiations between the Parties and their counsel and was
9 facilitated by experienced and neutral mediators after participating in two separate mediation
10 sessions.

11 Indeed, numerous courts have held that **gross** settlements approximating between 8%
12 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., In re Mego*
13 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
14 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a
15 cash settlement amounting to only a fraction of the potential recovery does not per se render
16 the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement
17 should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether
18 the settlement is fair and adequate depends on the "the difficulties in proving the case");
19 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
20 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
21 the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist.
22 Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and
23 hour class settlement which obtained **only 9.1%** of projected damages, given the risks of
24 continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC,
25 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement
26 of approximately 15% of the potential recovery was fair and reasonable). Here, the proposed
27 settlement ranges from 5%, if completely disregarding the various defenses presented, up to
28 16% if considering Defendants' good faith defenses. Gavron Decl. ¶ 29.

1 Despite the asserted fairness of the settlement terms, as set forth in the Notice of
2 Pendency of Class Action and Proposed Settlement (“Class Notice”), should any Class
3 Member wish to pursue his or her own case for the claims being released herein, each Class
4 Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. *See*
5 Notice, attached as **Exhibit A** to the Agreement. Moreover, as set forth in the Class Notice,
6 Class Members are advised of their right to attend the final approval hearing and/or object to
7 any of the terms contained in the Agreement. *Id.*

8 **1. Amount and Manner of Distribution of the Compensation to be**
9 **Provided to Class Members Including the Amount, or an Estimate,**
10 **of What Each Class Member Will Receive**

11 The Settlement Agreement provides for Seven Hundred Thousand Dollars
12 (\$700,000.00) as the Gross Settlement Amount. *See* Agreement ¶ 15. The Net Distribution
13 Fund (calculated after deduction of the Class Counsel Award of attorneys’ fees (up to
14 \$233,333.33) and costs (up to \$35,000.00), Class Representatives’ Service Awards (up to
15 \$20,000.00 total), payment of PAGA Penalties to the LWDA (\$37,500.00) and PAGA
16 Members (\$12,500.00), and Settlement Administration Costs (up to \$17,950.00) is estimated
17 to be approximately \$343,717.67. *See* Agreement ¶¶ 5, 15, 20, 27, 37, 47.e.i). Each Class
18 Member that does not opt-out of the settlement (or “Participating Class Member”) will receive
19 their share of the Net Distribution Fund based upon the number of workweeks worked during
20 the Class Period. *See* Agreement ¶ 47.e.v; Gavron Decl. ¶ 14.

21 Based thereon, on a raw average, each Class Member may potentially recover
22 approximately \$198.57. Gavron Decl. ¶ 15. The amount actually paid to each Class Member
23 may increase or decrease depending on the actual number of workweeks worked during the
24 Class Period and the number of opt-outs received. *Id.* ¶ 15. To the extent that there are valid
25 opt-outs, the Settlement Administrator will proportionately increase the Individual Class
26 Payments to each Participating Class Member so that the amount actually distributed to
27 Participating Class Members equals 100% of the Net Distribution Fund. *Id.*

28 Additionally, as part of the payment of PAGA Penalties, 25% of the PAGA Penalties,
or \$12,500.00, will be distributed to PAGA Members who worked during the PAGA Period on

1 a pro rata basis, based on the number of weeks worked by each PAGA Member during the
2 PAGA Period. Agreement ¶ 18.

3 Finally, funds from any checks that have not been cashed within 180 days of issuance
4 shall be paid to the Watsonville Law Center as the agreed upon *cy pres* beneficiary. *See*
5 Agreement ¶ 63. Counsel do not have any conflicts of interest with the proposed recipient.

6 **2. Whether, and Under What Circumstances, Amounts Available for**
7 **Payment in Settlement Might Not Be Paid to Class Members or**
Might Revert to the Defendants

8 None of the settlement funds will revert to Defendants. *See* Agreement ¶¶ 15, 47.b.

9 **3. Scope of the Release of Class Members' Claims**

10 As a condition of participating in this settlement, upon the Effective Date and funding
11 of the Gross Settlement Amount, Participating Class Members shall release the Released
12 Parties from “all causes of action that were pled or could have reasonably been pled based on
13 the factual allegations and/or causes of action alleged in the “First Amended Complaint for
14 Damages, Penalties and Injunctive Relief” in the Lawsuit during the Class Period, including,
15 but not limited to, causes of action for: (i) failure to provide meal periods (Labor Code §§
16 226.7 and 1198); (ii) failure to provide rest periods (Labor Code §§ 226.7 and 1198); (iii)
17 failure to pay hourly and overtime wages (Labor Code §§ 1194 and 1198); (iv) failure to
18 comply with itemized employee wage statement requirements (Labor Code §§ 226, 1174, and
19 1175); (v) failure to pay all wages upon termination (Labor Code §§ 201, 202, 203); (vi)
20 violation of Labor Code § 2802; and (vii) violation of Business & Professions Code §§ 17200,
21 which are premised on the violations described above” arising during the Class Period. *See*
22 Agreement ¶¶ 34, 69. The Released Parties are defined as “(a) GTI and Nor-West, (b) each of
23 their respective parent companies, subsidiaries, child companies, divisions, affiliates, related
24 companies, common ownership entities, and co-employers through operation of law or
25 otherwise, and (c) the current, former, and/or future shareholders, owners, board members,
26 directors, officers, managers, employees, agents, representatives, attorneys, insurers,
27 reinsurers, partners, investors, lenders, administrators, trustees, predecessors, successors,
28 assigns, and joint ventures of each (a) and (b), collectively, and individually.” *Id.* ¶ 31.

1 In addition, upon the Effective Date and funding of the Gross Settlement Amount,
2 Plaintiffs, PAGA Members, and the LWDA shall release the Released Parties from “all claims
3 for civil penalties pursuant to PAGA that were pled, or could have been pled, based on the
4 facts stated in the “First Amended Complaint for Damages, Penalties and Injunctive Relief”
5 and/or any PAGA Notice submitted to the LWDA for civil penalties under the PAGA,
6 including claims premised on alleged violations of Labor Code §§ 201, 201.3, 202, 203, 204,
7 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194,
8 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, 2698” arising during the PAGA Period. *Id.* ¶¶
9 35, 70.

10 Given that the releases are tailored to claims as pled in the operative First Amended
11 Complaint and arising from the facts alleged therein, the releases are appropriately limited.

12 **4. Tax Treatment of Settlement Amounts**

13 The Parties have agreed that the Individual Class Payments to Participating Class
14 Members shall be allocated as follows: one-third (1/3) as wages, one-third (1/3) as interest,
15 and one-third (1/3) as penalties. Agreement ¶ 47.e.vii.

16 With respect to Individual PAGA Payments distributed to PAGA Members, one
17 hundred percent (100%) of those payments shall be deemed IRS Form 1099 income. *Id.* ¶
18 47.d.iv.

19 Pursuant to the Settlement Agreement, employer-side payroll taxes on the wage portion
20 of the Individual Class Payments paid to Participating Class Members will be paid by
21 Defendants separately and in addition to the Gross Settlement Amount. *Id.* ¶ 15, 47.b.

22 **5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations**

23 As stated above, Class Members do not need to do anything should they wish to
24 receive their share of the Gross Settlement Amount. In other words, because this is not a
25 claims-made settlement, Class Members will not be required to make a submission to
26 participate in the settlement. Thus, this substantially decreases the amount of burden each
27 Class Member must bear in order to receive their Individual Class Payment. If a Class Member
28 does not wish to take part in this settlement and be bound by the release of class claims, the

1 Class Member must submit a request for exclusion. *See* Agreement ¶ 55.

2 **C. Notice to Class Members**

3 Should the Court grant the instant motion, Defendants will provide the Settlement
4 Administrator with a list containing each Class Member's full name, last known home address,
5 last known telephone number, Social Security number, total number of workweeks worked
6 during the Class Period and PAGA Period, and any other information required by the
7 Settlement Administrator in order to effectuate the terms of the settlement ("Class List").
8 Agreement ¶ 48. Upon receipt of the information and prior to mailing the Class Notice to
9 Class Members, the Settlement Administrator shall perform a search based on the National
10 Change of Address Database for information to update and correct for any known or
11 identifiable address changes. *Id.* ¶ 51. Within ten (10) calendar days of receipt of the Class List
12 from Defendants, the Settlement Administrator will mail the Class Notice out to Class
13 Members. *Id.* ¶ 50. Any Class Notice returned to the Settlement Administrator as non-
14 deliverable on or before the opt-out deadline shall be sent via regular first-class U.S. mail to
15 the forwarding address affixed thereto. *Id.* ¶ 53. If no forwarding address is provided, the
16 Settlement Administrator shall perform a skip trace or other search to locate the most current
17 address and resend the Class Notice. *Id.*

18 As set forth in the Class Notice, Class Members will be allowed to opt out of the
19 settlement by a certain deadline, or object to the settlement. Agreement at Exhibit A.

20 **D. Typicality and Adequacy of Representation**

21 **1. Class Representatives' Claims are Typical of the Class**

22 The commonality requirement is met when there are questions of law and fact common
23 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of
24 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
25 salient facts couple with disparate legal remedies within the class"). Commonality requires
26 only that some common legal or factual questions exist; the plaintiffs need not show that all
27 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
28 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v.*

1 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
2 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is
3 here, the class wide impact of the Defendant's policies satisfies the commonality requirement.
4 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

5 Plaintiffs allege that Defendants, as a matter of corporate policy, practice, or procedure
6 violated the Labor Code by failing to provide proper meal and rest breaks, pay hourly and
7 overtime wages when due and upon separation of employment, reimburse business expenses,
8 and provide accurate wage statements to employees. Declaration of Ryan Chanley ("Chanley
9 Decl.") ¶ 3; Declaration of Olivier Lara ("Lara Decl.") ¶ 3; Declaration of Veronica Medina
10 ("Medina Decl.") ¶ 3; Declaration of Celia Orozco ("Orozco Decl.") ¶ 3. In other words,
11 Plaintiffs contend that they were subjected to the same policies and practices as other Class
12 Members and that their claims are typical to those of the Class.

13 Moreover, Plaintiffs do not have any interests adverse to the Class, nor have any such
14 issues been raised or presented. Chanley Decl. ¶ 4; Lara Decl. ¶ 4; Medina Decl. ¶ 4; Orozco
15 Decl. ¶ 4. Plaintiffs have taken all necessary steps to represent the interests of the Class, and
16 by providing information and documents to their counsel. Chanley Decl. ¶ 4; Lara Decl. ¶ 4;
17 Medina Decl. ¶ 4; Orozco Decl. ¶ 4. For such reasons, Plaintiffs have adequately represented
18 the Class Members and will continue to do so.

19 **2. Class Counsel Have Adequately Represented the Class and Have
Experience with Wage and Hour Class Actions**

20 From the inception of the case, Class Counsel have zealously represented the interests
21 of the class. The settlement was obtained for the benefit of the Class, as opposed to the
22 individual Class Representatives. Further, Class Counsel have been approved as class counsel
23 on a number of prior cases, have litigated numerous other class action cases, and are
24 competent to represent the class. Fitzpatrick Decl. ¶ 4; Magee Decl. ¶¶ 4, 5; L. Lee Decl. ¶¶ 5-
25 7; Gavron Decl. ¶¶ 35-41; C. Lee Decl. ¶¶ 5-7.

26 **E. Costs and Fees**

27 **1. Attorneys' Fees and Costs**

28 California state and federal courts have recognized that an appropriate method for

1 determining award of attorneys' fees is based on a percentage of the total value of benefits to
2 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
3 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
4 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
5 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
6 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
7 entire burden alone." *Vincent*, 557 F.2d at 769.

8 The Common Fund doctrine is predicated on the principle of preventing unjust
9 enrichment. When a litigant's efforts create or preserve a fund from which others derive
10 benefits, she may require the passive beneficiaries to compensate those who created the fund.
11 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
12 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.
13 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine
14 has been applied "consistently in California when an action brought by one party creates a
15 fund in which other persons are entitled to share." The reasons for applying the common fund
16 doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit
17 because his recovery might be consumed by the expenses; correlative prevention of an unfair
18 advantage to the others who are entitled to share in the fund and who should bear their share of
19 the burden of its recovery; encouragement of the attorney for the successful litigant who will
20 be more willing to undertake and diligently prosecute proper litigation for the protection or
21 recovery of the fund if he is assured that he will be properly and directly compensated should
22 his efforts be successful." *Id.*

23 Indeed, most recently, the California Supreme Court has also now held that the award
24 of attorneys' fees in common fund wage and hour class action settlements should start with the
25 percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the
26 overwhelming majority of federal and state courts in holding that when class action litigation
27 establishes a monetary fund for the benefit of the class members, and the trial court in its
28 equitable powers awards class counsel a fee out of that fund, the court may determine the

amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

The Parties have agreed to a payment of a maximum of \$233,333.33, or one-third of the Gross Settlement Amount, for payment to Class Counsel as attorneys’ fees. Agreement ¶ 47.e.ii. The Parties have agreed to a payment of the foregoing attorneys’ fees and, thus, this payment should be presumed to be fair. Further, the parties have agreed to reimbursement of Class Counsel’s litigation costs up to \$35,000.00. *Id.* Class Counsel have, at their own risk, expended costs, for example, to file this instant action, effectuate service of process, pay mediation fees, and pay other litigation-related costs.

Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and costs being requested by the Parties, which will be further supported and discussed in Plaintiffs’ Motion for Final Approval, should the Court grant this Motion.

2. Proposed Payment to the Class Representatives

Class Representatives each request a service award of \$5,000.00. Agreement ¶ 47.e.i. The Class Representatives met and conferred with Class Counsel on a number of occasions to discuss the case, provided documents and information to Class Counsel, and reviewed the Settlement Agreement. As part of their duties as Class Representatives, Plaintiffs provided invaluable information, evidence, and documents that resulted in this settlement. Chanley Decl. ¶ 4; Lara Decl. ¶ 4; Medina Decl. ¶ 4; Orozco Decl. ¶ 4. Moreover, Plaintiffs also executed a general release of claims, which other members of the Class did not have to do.⁵ Agreement ¶¶ 71, 72; 11, 67.

In addition to the invaluable services that they provided, Plaintiffs also took a significant risk, both professionally and monetarily, in acting as the Class Representatives and

⁵ Chanley’s release excluded his FEHA claims, which were alleged in a different lawsuit.

1 seeking benefits on behalf of the Class. Because the claims alleged by the Class
2 Representatives involved the payment of costs to the prevailing party, Plaintiffs could have
3 possibly faced paying the costs of Defendants, had they not prevailed in this action.

4 Furthermore, given that future employers are much less likely to hire individuals who
5 have filed suit against their prior employer, particularly in cases of this nature, Plaintiffs may
6 face prejudice in the future from other potential employers. Plaintiffs took this risk upon
7 themselves and the whole Class benefited from these risks taken by Plaintiffs. Class Members
8 did not have to file individual lawsuits and bear the risks of payment of costs if they did not
9 prevail, nor did they have to face the potential for retaliation and not getting future
10 employment had they filed a public lawsuit.

11 **3. Settlement Administration Costs**

12 The Parties have agreed to an estimated payment of \$17,950.00 to the Settlement
13 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
14 settlement. Agreement ¶¶ 36, 37. Phoenix Settlement Administrators is a well-recognized class
15 action settlement administrator. These proposed costs result in a cost of approximately \$10.34
16 per class member, which is commensurate with other settlements and includes translation to
17 Spanish. The Parties believe that the administration fee is reasonable and should be approved.

18 **IV. PLAINTIFFS PROVIDED NOTICE TO THE LWDA**

19 Concurrent with the filing of this Motion, Plaintiffs provided notice to the Labor and
20 Workforce Development Agency. Gavron Decl. ¶ 42.

21 **V. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 22 **PRELIMINARY APPROVAL**

23 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
24 substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the
25 result of informed, extensive, and arm's length negotiations conducted by counsel for the
26 respective parties who are experienced in wage and hour class action litigation. For the
27 foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of
28 the proposed settlement, sign the proposed Order, approve and authorize mailing of the

1 proposed Class Notice, and set a date for a final approval hearing.

2
3 DATED: March 1, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

4
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