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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

JESSIE GARCIA and MIGUEL ANGEL GONZALEZ OCHOA, as individuals on behalf of themselves and all other similarly situated employees and/or Aggrieved Employees of Defendants,

Plaintiff,

v.

NORCAL POOL CONSTRUCTION INC., a California corporation; GUSTAVO NEGRETE RODRIGUEZ, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV394263

[Assigned for all purposes to the Honorable Beth McGowen, Department 22]

CLASS ACTION

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

Date: July 23, 2026
Time: 1:30 p.m.
Dept: 22
Judge: Hon. Beth McGowen

[*Filed concurrently herewith Notice of Motion; Declarations of Vilmarie Cordero, Jessie Garica, Miguel Angel Ochoa, and Sean Hartranft ; and [Proposed] Order*]

Complaint Filed: February 10, 2022
First Amended Complaint Filed: April 11, 2022
Second Amended Complaint Filed: September 14, 2022
Third Amended Complaint Filed: January 22, 2025
Trial Date: None set

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I. INTRODUCTION

Plaintiffs Jessie Garcia and Miguel Angel Ochoa ("Plaintiffs") seek preliminary approval of a $420,000.00 non-reversionary, no-claim-form Class and PAGA Representative Action Settlement ("Settlement") with Defendants Norcal Pool Construction, Inc. ("Norcal") and Gustavo Negrete Rodriguez ("Mr. Negrete"), (collectively, "Defendants"). This Settlement involves the wage and hour claims of approximately 700 current and former non-exempt, hourly employees who worked for Defendant in California during the period commencing February 10, 2018 to December 31, 2025, or the date upon which no more than 59,544 workweeks is reached, whichever occurs first.

Plaintiffs and Defendants (the "Parties") reached the settlement after an extensive investigation into the facts and legal claims of the matter. The investigation included a thorough analysis and review of Defendants' employment policies, putative class members' time and payroll records during the class period, in-depth interviews with putative class members, a full-day mediation with an experienced mediator well-versed in wage and hour class actions conducted at arms-length, and ongoing negotiations following mediation, and a review of Defendants' financial records.

The Settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendants' potential defenses thereto, as well as the risk, expense, and complexity, of continued litigation. In light of the Parties' support for the Settlement, and because it satisfies all of the criteria for preliminary approval under California law, the Court should grant preliminary approval.

II. FACTUAL BACKGROUND

A. Procedural History

Defendant Norcal is a California Corporation specializing in commercial and residential swimming pool construction throughout California. (Declaration of Vilmarie Cordero in Support of Plaintiffs' Unopposed Motion for Preliminary Approval ("Cordero Decl.") ¶ 6). Defendant Gustavo Negrete is the Chief Executive Officer, director, and owner of Norcal. (*Id.*) Plaintiff Jesse Garcia was employed by Defendants as a nonexempt driver from about April 2021 until his termination in October 2021. (Declaration of Jessie Garcia ("Garcia Decl."), ¶ 3). Plaintiff Miguel Angel Ochoa was employed by Defendants as a cement finisher from about December 2020, to about May 2022.

(Declaration of Miguel Angel Ochoa ("Ochoa Decl.") ¶ 3).

Plaintiffs' claim that, regardless of which worksite they were working at, they were most likely not getting any kind of meal break or rest break because there was too much work. According to employees, Defendant Rodriguez and their supervisors would frequently instruct them not to take meal breaks or even berate them for asking for one. Plaintiff Garcia, who worked as a driver stated that if someone tried to break, the foreman would call the employee directly and tell them they are not allowed to take breaks. In addition, Plaintiffs' claim that there was an auto-deduct system in which Defendants shaved or deducted 30-minutes for a meal break period that was not taken. Plaintiffs also allege that they were not paid for all hours worked and that they had to consistently work off the clock.

Plaintiff Ochoa, who consistently worked outdoors on construction sites, claims that he worked when the temperature exceeded 100 degrees regularly during the summer months. He alleges that he was deprived of his right to take recovery or cooldown periods and that no one informed him about or provided any type of training relating to recovery periods or heat illness prevention.

On December 23, 2021, Plaintiff Jessie Garcia provided his initial written notice, setting forth the Labor Code violations Plaintiff Garcia sought to allege against Defendants and the factual basis for such violations, upon Defendants and the Labor and Workforce Development Agency ("LWDA"). (Cordero Decl., ¶ 9).

Plaintiff Garcia filed the initial class action complaint on February 10, 2022, in Santa Clara County, Case No. 22CV394263. (Cordero Decl., ¶ 10). The initial complaint alleged Defendants: (1) Failed to Provide Meal Periods and/or Timely Pay Premium Wages; (2) Failed to Provide Rest Periods and/or Timely Pay Premium Wages; (3) Failed to Pay All Minimum or Regular Wages; (4) Failed to Pay All Overtime Wages; (5) Failed to Reimburse Necessary Business Expenses; (6) Failed to Maintain Accurate Records; (7) Failed to Furnish Accurate Itemized Wage Statements; (8) Failed to Timely Pay All Wages Due and Owing Upon Separation of Employment; and (9) Violated California's Unfair Competition Law. (Cordero Decl., ¶ 15).

On April 11, 2022, Plaintiff Garcia filed a First Amended Complaint, adding a cause of action for Failure to provide Recovery Periods, and a representative claim for civil penalties under PAGA, Labor Code Section 2698. (Cordero Decl., ¶ 11).

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On June 10, 2022, Plaintiff Garcia filed and served a second LWDA notice, therein alleging additional facts and legal theories for additional violations of California's Labor Code. (Cordero Decl., ¶ 12). On September 14, 2022, Plaintiff Garcia filed a Second Amended Complaint to include the additional facts and theories set forth in the second LWDA correspondence. (Cordero Decl., ¶ 13).

On June 10, 2024, Plaintiff Garcia sought leave to file a Third Amended Complaint to add an additional plaintiff and class representative—Miguel Angel Gonzalez Ochoa. (Cordero Decl., ¶ 14). The court granted leave, and Plaintiffs filed a Third Amended, and now operative Complaint on January 22, 2025. (Cordero Decl., ¶ 14).

Plaintiffs engaged in extensive formal discovery and investigation. Plaintiffs propounded three sets of Special Interrogatories and four sets of Requests for Production of Documents. (Cordero Decl., ¶¶ 22-28). After engaging in significant motion practice, including several motions to compel further responses to discovery, the parties agreed to participate in private mediation. (*Id*. at ¶¶ 29-31).

On April 16, 2024, the parties participated in a formal mediation with experienced and well-regarded wage and hour class action mediator Scott Markus. (Cordero Decl., ¶ 17). The parties did not settle at the mediation but agreed to continue the settlement discussions. (*Id.*)

On September 5, 2024, the Court granted a Motion to be Relieved as Counsel filed by Defendants' counsel. (Cordero Decl., ¶ 18).

On January 6, 2025, Defendants substituted Michael Manoukian of the law office Lathrop GPM LLP as counsel. (Cordero Decl., ¶ 19). The parties participated in an extensive meet and confer call and agreed to re-engage in settlement negotiations. (Cordero Decl., ¶ 44). In the following months, the parties continued the settlement discussions and agreed to exchange additional documents and information to substantiate Defendants' alleged inability to pay a class action settlement. (*Id.*) To substantiate the purported inability to pay, Defendants informally produced several financial records pertaining to both Defendants including Balance Sheets and Profit and Loss statements for years 2023-2025, corporate tax returns for years 2023 and 2024, and individual tax returns for years 2021-2024 for Mr. Negrete. (Cordero Decl., ¶ 45).

On July 11, 2025, the Parties agreed to settle the Class and PAGA claims alleged in the operative Complaint. The parties executed the long form settlement agreement on June 30, 2026. (Cordero Decl.,

¶¶ 46, 47). In accordance with California Labor Code section 2699(1)(2), a copy of the notice and the Settlement, along with a copy of this Motion, was submitted to the LWDA on June 30, 2026. (Cordero Decl., ¶ 47).

B. Discovery and Investigation

The parties engaged in extensive discovery including three sets of formal written discovery and informal discovery for mediation and settlement purposes. (Cordero Decl., ¶¶ 22-33). Through formal discovery, Plaintiffs obtained Plaintiffs' personnel files, written policies and procedures pertaining to nonexempt employees, all available time and payroll records for Plaintiffs and the Class members, and class contact information for putative class members following a *Belaire-West* notice. (*Id.*)

Specifically, Plaintiffs obtained contact information for approximately 465 employees. Prior to the mediation, Plaintiffs' counsel conducted about 35 in-depth interviews with putative class members, the majority of whom indicated a willingness to provide a sworn declaration in support of Plaintiffs' claims. (Cordero Decl., ¶¶ 24, 37).

In addition, Defendants provided sworn responses to three sets of Special Interrogatories and produced hundreds of documents in response to Plaintiffs' request for production of documents sets one and two. Defendants' responses to Plaintiffs' requests for production of documents included the production of all available time and pay records, job descriptions, employee handbooks and other written policies, sample meal break waivers, internal communication records, and safety training sign-in sheets. (Cordero Decl., ¶¶ 22-33).

During the settlement negotiations, Defendants expressed an inability to pay a full value settlement due to the Defendants' poor financial state. (Decl. Cordero, ¶ 44). The parties spent substantial efforts obtaining and reviewing relevant financial documents before agreeing to a reduced class action settlement. (Cordero Decl., ¶¶ 44, 45).

In addition, prior to resolving the class claims, Class Counsel conducted in-depth, fact-finding interviews with Plaintiffs and the class members to assess the relative strength of the potential claims. (Cordero Decl., ¶ 37). The documents, information, and data obtained from Defendants through formal and informal discovery were more than sufficient for Class Counsel to analyze the Labor Code violations alleged in the operative Complaint and make an informed decision about Defendants' financial situation

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and the resolution of this case. (Cordero Decl., ¶ 39). During mediation and the post-mediation settlement discussions, the Parties engaged in good-faith, non-collusive and hard fought negotiations, discussing the realistic damages exposure to Defendants, the relative strengths and weaknesses of the claims, the risks and delays of further litigation, and the real risks for Plaintiffs and the Class of obtaining no value for the claims because of Defendants' precarious financial condition. (Cordero Decl., ¶¶ 41, 48). Plaintiffs now seek preliminary approval of the Settlement and approval of the PAGA settlement. See Labor Code § 2699(l).

III. <u>KEY SETTLEMENT TERMS AND RELIEF OBTAINED</u>

The general structure and terms of the settlement are straightforward: following preliminary approval, the class notice will be distributed to all current and former non-exempt employees of Defendants' who worked in California during the Class Period. All employees who do not opt out of the settlement ("Participating Class Members") will receive their individual settlement allocations following final approval. (Cordero Decl., Ex. 1 [the "Settlement Agreement" or "SA"]). The basic terms of the Settlement Agreement are as follows:

A. Class Definition

The class is defined as all current and former nonexempt employees of Defendants who performed work in California during the Class Period. (SA § 1.9). The Class Period is the period commencing February 10, 2018 to December 31, 2025, or the date upon which the Class Members' workweeks equal to but not exceed 59,544, whichever occurs first. (SA § 1.12).

B. Gross Settlement Amount and Allocation

<u>Gross Settlement Amount</u>. Defendants will pay a sum of $420,000.00 to resolve all class and PAGA claims in this action. (SA. § 3). Defendants' share of all state and federal payroll taxes, will be paid separately by Defendants to the Settlement Administrator. *Id.* None of the Gross Settlement Amount will revert to Defendants. *Id.*

<u>Net Settlement Amount.</u> The term Net Settlement Amount means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Class Counsel's Fees Payment, Class Counsel's Litigation Cost Payment, Class Representatives' Service Payment, Administration Expenses Payment, and the PAGA Payment. (SA. §§ 1.27, 3.1.4). The remainder is to be paid to Class Members as

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Individual Class Payments. *Id.* The Net Settlement Amount is currently estimated to be $215,010.00. *Id.*

<u>Administration Costs</u>. The Parties selected Apex Class Action, LLC ("Apex") to serve as the Settlement Administrator. (SA § 7.1) Apex provided the lowest bid amongst several settlement administrators. (Cordero Decl., ¶ 106). Apex is an experienced settlement administrator, and it provided an estimate of $10,490.00 for administration of the settlement. (Declaration of Sean Hartranft ("Hartranft Decl.") ¶¶ 2, 4).

<u>Class Representative Incentive Award</u>. Plaintiffs will seek, and Defendants do not oppose, Class Representative Service Awards of $7,500.00 for Plaintiff Jessie Garcia, and $5,000.00 for Plaintiff Miguel Angel Gonzalez Ochoa. (Cordero Decl., ¶ 137; SA § 3.1.1).

<u>Class Counsel's Fees and Reimbursement Costs</u>. Class Counsel will seek, and Defendants will not oppose, an award of $140,000.00 for attorneys' fees (1/3 of the Gross Settlement Amount), and the reimbursement of up to $25,000.00, but in the amount of reasonable costs actually incurred in the litigation. (Cordero Decl., ¶ 122; SA § 3.1.2).

<u>PAGA Allocation</u>. The Parties agreed to allocate the sum of $20,000.00 to settle the claims for civil penalties pursuant to PAGA. (Cordero Decl., ¶ 74; SA § 3.4). Of this amount, 75% ($15,000.00) will be paid to the LWDA, with the remaining 25% ($5,000.00) being made available for distribution to the PAGA Group Members. (*Id.*)

C. Individual Settlement Payments to Class Members and Tax Allocation

Class Members shall be allocated a *pro rata* portion of the Net Settlement Amount available for distribution which will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (SA § 3.1.4). 25% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (SA § 3.2). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (*Id.*). The remaining 75 % of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (*Id.*)

Individual PAGA Payments to Aggrieved Employees will be allocated as 100% penalties and will

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be reported on IRS 1099 Forms. (SA §§ 3.4.1, 3.4.2). Aggrieved Employees assume full responsibility and liability for any employee taxes owed on the Non-Wage Portion and Individual PAGA payments. (*Id.*)

D. Release Provisions

Upon Defendants' funding of the Gross Settlement Amount and payment of all employer payroll taxes, All Participating Class Members will release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Third Amended Complaint and ascertained in the course of the Action. (SA § 5.4).

All PAGA Aggrieved Employees, regardless of whether they are also Participating Class Members or Non-Participating Class Members, will release the Released Parties of all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Third Amended Complaint and the PAGA Notices during the PAGA Period. (SA § 5.5).

The releases are effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. (SA § 5.1).

E. Disposition of Unclaimed Funds

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to shall transmit the funds represented by such checks to the Legal Aid at Work, a recognized non-profit organization that provides free legal services to workers throughout California, which is consistent with Code of Civil Procedure section 384, subdivision (b) ("Cy Pres Recipient"). (SA § 4.7). The Parties, Class Counsel and Defense Counsel represent that they have no financial interest or financially beneficial relationship with the intended Cy Pres Recipient. (SA § 4.7).

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

"Public policy generally favors the compromise of complex class action litigation." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009). Settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). The purpose of preliminary evaluation of class action settlements is to determine whether the proposed settlement is within the range of reasonableness, and whether notice to

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the class of the settlement terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see* Alba Conte & Herbert Newberg, *Newberg on Class Actions* (4th ed. 2002) ("*Newberg*"), § 11.25.

A trial court must exercise its discretion through the application of several well-recognized factors when deciding whether a class action settlement is fair. The list of factors, which "is not exhaustive and should be tailored to each case," includes "the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). The most important factor the trial court should consider at the preliminary approval stage is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 407-408 (2010); *Kullar*, 168 Cal. App. 4th at 130.

Here, the proposed $420,000.00 settlement meets all the criteria for preliminary approval because it is supported by experienced counsel, was reached after hard fought negotiations, extinguishes the risk of continued litigation, provides significant monetary recovery to Class Members, and provides a fair and adequate distribution of Settlement proceeds to Class Members. (Cordero Decl., ¶¶ 48, 97, 103).

A. The Settlement is the Result of Serious and Informed, Arms' Length Negotiations and Presumptively Fair

California courts recognize that a "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) sufficient investigation allows counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802. Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. William B. Rubenstein, et al., *Newberg on Class Actions* § 13:45 (5th ed. 2011-2017). "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).

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Here, the Settlement is the result of extensive non-collusive negotiations between the Parties, conducted at arm's length, and informed by substantial factual and legal investigation. (Cordero Decl., ¶ 41). The Parties participated in a full-day mediation with Scott Markus, a well-respected, neutral third-party mediator well-versed and experienced in wage and hour class actions, who helped the Parties initiate settlement discussions. (Cordero Decl., ¶ 40). Following the settlement, with the foundation set by mediator Markus, the parties continued their settlement negotiations, eventually reaching an agreement. (Cordero Decl., ¶¶ 44-46). At all times, the Parties' negotiations were hard-fought, well-informed, and conducted at arm's length between attorneys with substantial wage and hour class action experience. (Cordero Decl., ¶ 48).

In sum, the Settlement is presumptively fair and should be approved because it is the product of well-informed, arm's-length negotiations between experienced attorneys.

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B. Sufficient Investigation Supports the Settlement

A proposed settlement is fair and reasonable when there has been sufficient investigation and discovery to permit counsel and the court to act intelligently. *Dunk*, 48 Cal. App. 4th at 1802. Here, a lengthy and thorough investigation went into the merits of Plaintiffs' claims. (Cordero Decl., ¶¶ 21, 39, 125). The Settlement was reached only after extensive investigation and research, thorough calculations and risk evaluation, substantial formal and informal discovery, and a comprehensive analysis of the claims and defenses. (*Id.*) Class Counsel firmly believes that the information exchanged and analyzed is sufficient for the Parties to make an informed decision about a fair resolution of this action. (Cordero Decl., ¶ 39)

C. Class Counsel is Highly Experienced and Supports Preliminary Approval

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve a settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd. 661 F.2d 939. (9th Cir. 1981). Although the recommendations of counsel is not conclusive, the court can properly consider the recommendations, particularly if counsel have been involved in litigation for some period of time, appear to be competent, have experience with similar litigation, and have completed significant discovery. 4 *Newberg and Rubenstein on Class Actions* § 13:48 (6th ed. Dec. 2025).

Here, for nearly five years, Class Members have been represented by well-qualified counsel who have decades of experience in wage and hour class action litigation. (Cordero Decl., ¶¶ 150-154). Class Counsel are qualified to evaluate the class claims, the benefits of settlement versus trial, and the viability of the defenses asserted. (*Id*.) Counsel on both sides share the view that this is a fair and reasonable settlement. (Cordero Decl., ¶ 97). Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, Class Counsel believe the proposed Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. (Cordero Decl., ¶ 97).

D. The Amount of the Settlement is Fair and Reasonable Based on the Strength of Plaintiffs' Case and the Risk, Expense, and Likely Duration of Further Litigation

In reaching this Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement; the risk, expense, complexity, and likely duration of litigation and of maintaining class certification through trial; the present state of the law as it applies to wage and hour class actions; the burdens of proof necessary to establish liability against Defendants; and Defendants' financial state as demonstrated by the financial records produced by Defendants during settlement negotiations. (Cordero Decl., ¶¶ 94-97, 99). Class Counsel analyzed the merits of the class claims, which presented significant hurdles and risks. (Cordero Decl., ¶¶ 76-93).

Although Plaintiffs' maintain their claims are meritorious, Plaintiffs acknowledge Defendants possesses legitimate defenses to both liability and class certification. (Cordero Decl., ¶ 76).

Specifically, Defendants deny all allegations and claim that they fully complied with California wage-and-hour laws. Defendants maintained some facially compliant written meal and rest break policies in its Employee Handbook. (Cordero Decl., ¶ 78). Defendants' policies required employees to record meal periods, prohibited working during meal periods, and instructed employees to notify supervisors if unable to take any meal or rest breaks. (*Id*.) At some point during the Class Period, Defendants also implemented a formal meal period waiver program. (*Id*.) Defendants also maintain that some putative class members may be bound by arbitration agreements containing class action waivers. (Cordero Decl., ¶ 81). Defendants contend employees were in fact provided the opportunity to take all required breaks, and employees were not required to work during meal or rest periods or remain on duty during such breaks. (Cordero Decl., ¶ 78).

Defendants' written policies also instruct employees to record all working time. (Cordero Decl., ¶ 79). To the extent any employee performed work during breaks or off-the-clock, Defendants contend such work was voluntary, performed without Defendants' knowledge or authorization, and would have been compensated had Defendants been aware of it. (*Id.*) Defendants also contend employees could review and approve their own time records before payroll processing, and Defendants never automatically deducted meal periods that were not taken. (*Id.*) Finally, Defendants deny any knowing or intentional wage statement violations and dispute that any failure to timely pay final wages was willful, which could preclude waiting time penalties. (Cordero Decl., ¶ 82).

As to certification, Defendants could argue that individual issues predominated over common questions, particularly with respect to whether individual employees actually experienced the alleged violations. With over 700 class members working at numerous locations throughout northern California and in various positions, Defendants could contend that the experiences of class members varied significantly from location to location and position to position. (Cordero Decl., ¶ 77). Defendants could point to variations in how policies were implemented at different locations and for different jobs and argue that individualized proof would be required to determine which employees experienced violations and to what extent. (*Id.*)

Thus, although Plaintiffs are confident in their claims, Plaintiffs face real risks in maintaining the class claims, as well as establishing the full amount of Plaintiffs' estimated damages and civil penalties for his claims at trial. (Cordero Decl., ¶ 99). Thus, this litigation cannot legitimately be characterized as being one where Plaintiffs would inevitably prevail at trial. (*Id.*) These risks are averted by the proposed Settlement. (*Id.*)

Moreover, continued litigation would likely be extremely expensive and time consuming, reducing and substantially delaying any recovery by the Class. (Cordero Decl., ¶¶ 86, 87). Although the Parties have engaged in a significant amount of investigation, the Parties are far from completing formal discovery. (Cordero Decl., ¶¶ 86, 91). The Parties have not completed all written discovery, witnesses' depositions, expert exchanges and depositions, and damages analysis for trial purposes, among others. (Cordero Decl., ¶ 86). There would also be significant motion practice should the Parties proceed with litigation, including motions to compel discovery, class certification, and respective dispositive motions.

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(*Id.*) Even if Plaintiffs were successful in certifying the class and proving the merits of the class action claims, Defendants may appeal, requiring the Parties to engage in expensive and protracted appellate practice. (*Id.*). This Settlement avoids all the risks and expenses associated with further litigation, and instead provides for immediate and substantial monetary relief to the Class Members. (Cordero Decl., ¶ 97).

E. The Amount Offered in Settlement Given the Estimated Value of the Claims Similarly Favors Preliminary Approval of the Settlement

After reviewing the records and conducting interviews, Plaintiffs calculated the maximum possible exposure for all of the class claims alleged in this litigation is 16,173,926.89, and the maximum in PAGA civil penalties is approximately $17,670,000.00. However, this figure assumes that class members experienced all alleged violations during all workweeks, such a calculation would be premised on an unlikely “everything goes right” scenario that does not account for the substantial risks and defenses outlined above. A more realistic valuation must account for the likelihood that class certification could be denied (a risk), that Defendants may prevail on some or all claims at summary judgment or trial (a significant risk), that damages would be reduced based on individualized proof showing that not all violations occurred for all class members during all time periods (a near certainty), and that ongoing, expensive litigation and appeals would be required before any recovery could be obtained (a certainty).

The $420,000.00 Settlement is an excellent result considering all these risks of prevailing at trial given the relative strength of Defendants’ defenses, and risks presented given the uncertainty of the law, and Defendants’ financial condition. Here, the possibility of recovering several millions dollars on behalf of the Class is remote, particularly in light of Defendants’ written policies, the purported existence of arbitration agreements, the difficulty in certifying and proving off-the-clock work, and the existence of potential variations among Class Members, which will reduce the overall value of the class claims that do get certified. Moreover, the reasonableness of the proposed Settlement is underscored by the fact that Defendants have potentially viable grounds for not only challenging liability and Plaintiffs’ right to assert claims on behalf of the Class, but also disputing Plaintiffs’ estimate of the potential value of each class claim and potential penalties. If the Settlement is not approved, the Parties will engage in vigorous and expensive litigation that could take many more years to conclude.

By contrast, the proposed Settlement provides immediate and adequate monetary relief to the Class Members and Aggrieved Employees. Plaintiffs estimate the value per workweek to the putative class members at $7.05 per workweek—calculated by dividing the settlement amount of $420,000.00 by the 59,544 estimated workweeks. This represents a significant monetary recovery for the Class. Using the net settlement amount of $215,010.00, Plaintiffs estimate the average Individual Class Payment at approximately $307.16 for each Class Member if all estimated 700 Class Members participate. (Cordero Decl., ¶ 95). This will provide a fair and reasonable recovery to the entire Class without further delay. (Cordero Decl., ¶ 97). While the amount paid to Class Members represents a significant discount on Plaintiffs estimate of the maximum "everything goes right" total exposure to Defendants, this reduction in the amount of recovery represents a reasonable compromise considering the substantial risks Plaintiffs would face in the litigation, and the Defendants' financial condition. (Cordero Decl., ¶¶ 94-97).

F. All Other Terms of the Agreement are Fair

The Settlement treats all Class Members fairly and equitably. Each one of the Class Members shall be entitled to receive a pro-rata portion of the Net Settlement Amount available for distribution based upon his or her respective number of workweeks worked during the Class Period. (Cordero Decl., ¶ 101). Class Members who worked more workweeks during the Class Period, and thus presumably experienced more violations, will be entitled to a larger portion of the Net Settlement Amount compared to those who worked less.

The Settlement is non-reversionary. (SA § 3). The Administrator will disburse the entire GSA without asking or requiring Class Members to submit any claim as a condition of payment. (*Id.*) The releases are appropriately tailored to claims that were or could have been alleged based on the operative complaint facts. (SA § 5.4.) Participating Class Members do not release any other claims, including claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits, wrongful termination claims, violation of the Fair Employment and Housing Act, or claims based on facts occurring outside the Class Period. (SA § 5.4). The tailored release protects Class Members' other potential claims while resolving the wage and hour claims at issue in this litigation. (SA § 5).

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The Settlement also provides fair and appropriate procedures for notice, opt-out rights, and objections. Class Members will receive individual notice by mail that includes clear instructions on how to object or opt out. (SA § 7.5; SA Exh. A) The Administrator will perform National Change of Address searches and re-mail returned notices to ensure maximum delivery. (SA §§ 4.5). Class Members will have 45 days from the mailing of notice to submit objections or opt-out requests, with an additional 14 days for those whose notices are re-mailed. (SA § 7.5.1). These procedures ensure adequate notice and opportunity to be heard.

The tax treatment is also fair and appropriate, with proper allocation between wages (20%) and penalties/interest (80%). (SA § 3.2). This allocation reflects the nature of the Settlement and ensures compliance with tax law while maximizing Class Member recovery.

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G. The Penalties Allocated to PAGA Are Reasonable

Where settlements negotiate a good faith amount for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of other" class members, such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve amounts for PAGA penalties in the range of zero to two percent of the total maximum amount of the settlement. *See McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124 at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA settlements in the range of zero to two percent of the total Settlement); *Calhoun, et al., v. Celadon Trucking Services, Inc.*, No. 5:16-cv-01351-PSG-FFM, 2017 WL11631978, at *9 (C.D. Cal. Nov. 13, 2017) (approving $14,500 payment to LWDA from $950,000.00 settlement); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving $10,000 payment to the LWDA from $3.9 million settlement); *Chu v. Wells Fargo Invs. LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving $7,500 payment to LWDA from $6.9 million common fund settlement); see also *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (holding trial court properly approved settlement that allocated nothing to PAGA claims).

Here, the Parties negotiated a good faith PAGA settlement amount of $20,000.00, with 75% ($15,000.00) going to the LWDA, and the remaining 25% ($5,000.00) to be distributed to Aggrieved

Employees. (SA § 3.4). The $20,000.00 allocated to the PAGA Payment represents approximately 4.76% of the Gross Settlement Amount, which is in line with amounts that are routinely approved by courts in this state. The PAGA settlement is reasonable because it was negotiated in good faith and was not the result of self-interest at the expense of any Class Member. (Cordero Decl., ¶ 74).

Accordingly, the proposed $20,000.00 allocation to the PAGA Payment strikes a balance between the interest of all parties, including the LWDA and the general public, by penalizing the employer and providing relief to the Aggrieved Employees. As such, Plaintiffs respectfully request that the Court approve the allocation of $20,000.00 to the PAGA Payment.

H. The Service Awards to Plaintiffs Fall Well Within the Range of Reasonableness

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the course of the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to plaintiffs for their efforts in bringing class case). Courts frequently approve awards of $10,000 or more. *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393-1395 (2010) (upholding $10,000 service awards). The factors courts use in determining the amount of a class representative service award include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation. *See Clark*, 175 Cal. App. 4th at 804-807. Here, all four factors support the approval of the $7,500.00 service award to Plaintiff Jessie Garcia, and the $5,000.00 service award to Plaintiff Miguel Angel Ochoa.

Plaintiffs have assisted and consulted with class counsel during the litigation, provided relevant information, identified witnesses, and participated in mediation, among other things. (Cordero Decl., ¶¶ 115-121; Garcia Decl. ¶¶ 30-36, 44; Ochoa Decl., ¶ 42). As Plaintiffs explain in their respective declarations, Plaintiffs effectively and fairly represented the Class Members, and did not place their interests above those of any member of the putative Class. (Garcia Decl. ¶¶ 23, 42 ; Ochoa Decl. ¶¶ 25, 40). Plaintiffs faced real risks by bringing the class litigation, including payment of fees and costs to Defendants in the event Defendants prevailed. (Garcia Decl. ¶¶ 26, 28, 46 ; Ochoa Decl. ¶¶ 28, 30, 39). Declarations from each Plaintiff regarding the nature of their participation in the action, including specifics

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of actions taken, time committed and risks faced are included herewith. *See Clark v. American Residential Services LLC* 175 Cal. App. 4th 785, 804-807 (2009).

Accordingly, the Service Payments requested for Plaintiffs is reasonable, appropriate, and justified.

I. The Work Performed by Class Counsel Supports the Fees and Costs Requested

Class Counsel has performed a significant amount of work in this class action, including conducting extensive research, investigation, and analysis of each potential cause of action, active litigation, and anticipates in engaging in additional work if this Court approves the Settlement. (Cordero Decl., ¶¶ 124, 128). Class Counsel's work resulted in the Settlement which provides significant benefits to Class Members.

The California Supreme Court has unanimously held "that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its 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." *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 503 (2016). Courts have awarded common fund fees calculated using a percentage-of-fund method that is not dependent on counsel's lodestar amount. *Pearl, California Attorney Fee Awards* (CEB 3d ed. 2010) § 5.19 (citing *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009); *Bell*, 115 Cal. App. 4th at 726; *Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253, 1270 (2005).) This common fund approach is especially suitable where, as here, a settlement fund is readily available. *See Dunk*, 48 Cal. App. 4th at 1808-09.

Here, the proposed Settlement provides that Class Counsel may seek attorney's fees of $140,000.00 (or one-third of the Gross Settlement Amount), in addition to reimbursement for the actual litigation costs, in an amount not to exceed $25,000.00. (Cordero Decl., ¶ 122; SA § 3.1.2). As demonstrated in the Declaration of Vilmarie Cordero filed herewith, Class Counsel performed a significant amount of work litigating this action for nearly five years, including extensive research, investigation, and analysis of each potential cause of action; review and analysis of Defendants' policies, timekeeping data, and payroll records; analysis of violation rates and damages exposure; preparation and service of PAGA notices; drafting of the Complaint and multiple amended complaints; propounding

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discovery; significant motion practice; preparation of a detailed mediation brief; participation in a full-day mediation; negotiation of settlement and its terms; and drafting of the Settlement Agreement and preliminary approval papers. (Cordero Decl., ¶ 124). Class Counsel committed, and continues to commit, significant financial and staffing resources to this case and undertook this action on a contingency basis, thereby bearing all the risk of non-recovery and advancing all costs of this complex, risky, and time-consuming litigation. (Cordero Decl., ¶ 128).

Class Counsel's extensive experience in wage and hour class actions also supports the reasonableness of the fee request. (Cordero Decl., ¶¶ 150-154.) Accordingly, for purposes of this Motion, the requested fees and costs are reasonable. Accordingly, for purposes of this Motion, the requested fee amount falls well within the range of reasonableness.

V. <u>THE NOTICE PLAN SATISFIES DUE PROCESS</u>

To protect the rights of absent class members, California Rule of Court 3.769(f) requires Class Members be provided with notice of the final approval hearing and an explanation of the proposed settlement and objection procedures. Procedural due process does not guarantee any particular procedure; it requires only notice reasonably calculated to apprise interested parties of the pendency of the action affecting their interests and an opportunity to present their objections. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Notice that meets this standard and is neutrally worded satisfies due process. *Ryan v. Cal. Interscholastic Fed'n - San Diego Section*, 94 Cal. App. 4th 1048, 1072 (2001).

Here, the proposed Class Notice provides all the information a reasonable person would need to make a fully informed decision about the Settlement. The Class Notice summarizes the lawsuit, including the contentions and denials of the Parties, the proceedings to date, and the terms and conditions of the Settlement in plain language in an informative and coherent manner. (SA, Exh. A.) The Class Notice also fully informs Class Members of the terms of the Settlement, its effect on their rights, their options as Class Members and the procedure for opting out, objecting, and/or receiving payment, and the consequences of exercising those options. (*Id.*) The Class Notice notifies the Class Members of their reported Workweeks and PAGA Pay Periods, and the estimated Individual Class Payment they will receive. (*Id.*) The Class Notice also states the date, time, and place of the final approval hearing, and explains how Class Members

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can obtain additional information, as well as view a copy of the Settlement Agreement. (*Id.*). Thus, the notice plan satisfies due process.

VI. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED FOR SETTLEMENT PURPOSES

Provisional certification is appropriate at the preliminary approval stage where, as here, the Court has not yet certified the class and the requirements for certification are met. *Newberg on Class Actions* §§ 3:16-13:18 (5th ed. 2011-2017). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1806 (1996); *Vasquez v. Superior Ct.*, 4 Cal. 3d 800, 809-11 (1971). The provisional certification process is less demanding than a traditional motion for class certification. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-27 (1997); *Carter v. City of Los Angeles*, 224 Cal. App. 4th 808, 826 (2014).

A. There is an Ascertainable and Sufficiently Numerous Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *Vasquez*, 4 Cal. 3d at 810-11. Here, Class Members are easily identifiable from Defendants' own personnel and payroll records. Records show a class size of approximately 700 Class Members. (Cordero Decl., ¶ 133.) Because joinder of 700 employees would be impracticable, and Class Members can readily be determined by Defendants' personnel records, there is a numerous and ascertainable class that is suitable for provisional certification. (Cordero Decl., ¶ 147).

B. There is a Well-Defined Community of Interest

The community of interest requirement is established by demonstrating: (1) predominant common questions of law or fact; (2) class representatives with claims typical of the class; and (3) class representatives can adequately represent the class. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

1. Common Questions of Law and Fact Predominate

The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. *See*, *e.g.*, *Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605 (1987); *Lazar v. Hertz Corp.*, 143 Cal. App. 3d 128 (1983).

Here, common issues of fact and law predominate as to each claim alleged by Plaintiffs on behalf of the Class because this action concerns allegations that Defendants' common, class-wide policies and

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practices resulted in Labor Code violations. Common issues predominate because the challenged practices apply uniformly to all Class Members and the resolution of these over-arching questions will determine liability for the Class as a whole. (Cordero Decl., ¶ 138).

2. Plaintiffs' Claims are Typical

"Typicality" focuses on the proposed representatives' claims as they relate to the defendant's conduct and activities. *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983). Here, Plaintiffs' claims are typical of the Class because Plaintiffs, like all Class Members, were subject to the same allegedly unlawful practices while working for Defendants and sustained the same/similar damages. (Cordero Decl.,¶ 142).

3. Plaintiffs and Class Counsel Will Adequately Represent the Class

The adequacy requirement is met by fulfilling two conditions: (1) a named plaintiff must be represented by counsel qualified to conduct the pending litigation; (2) a named plaintiff's interests cannot be antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450 (1976). Here, both are met. First, Plaintiffs retained counsel with extensive experience in prosecuting complex wage and hour class actions and who have worked diligently to obtain this Settlement for the Class. (Cordero Decl., ¶¶ 150-154). Second, Plaintiffs have no conflict of interest with the Class and have worked toward a positive resolution of this case, demonstrating their interest in prosecuting this action and dedication to obtaining the best possible result for all Class Members. (Garcia Decl. ¶ 29; Ochoa Decl., ¶ 31).

Accordingly, provisional certification for settlement purposes is warranted because all requirements are satisfied and certification for settlement purposes serves judicial efficiency.

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VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant preliminary approval of the Class and PAGA Action Settlement.

Respectfully submitted,

Dated: June 30, 2026

ARCH LEGAL, P.C.

By: ______________________

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