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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

BOBBY BIRDI, individually, and on behalf of
others similarly situated, and as an aggrieved
employee and Private Attorney General,

Plaintiff,

vs.

LUCID USA, INC., a Delaware corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV003541

Honorable Mark Markman
Department 23

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

Date: August 8, 2024
Time: 10:00 a.m.
Dept: 23

Complaint Filed: December 3, 2021
FAC Filed: February 1, 2022
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on **August 8, 2024 at 10:00 a.m.** in Department 23 of the
3 above-captioned Court located at 1221 Oak Street, Oakland, California 94612, pursuant to California
4 Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and California
5 Labor Code section 2699(l), Plaintiff Bobby Birdi (“Plaintiff”) will and hereby does move the Court
6 for an Order granting final approval of the proposed class action and Labor Code Private Attorneys
7 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement between
8 Plaintiff and Defendant Lucid USA, Inc. (“Defendant”).

9 Plaintiff requests that the Court enter an Order:

- 10 1. Granting final approval of the class action and PAGA settlement;
- 11 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
12 forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement and Amendment
13 No. 1 to Joint Stipulation of Class Action and PAGA Settlement (together, “Settlement Agreement”
14 or “Settlement”), including payment by Defendant of the Gross Settlement Amount of One Million
15 Seventy-Five Thousand Dollars and Zero Cents (\$1,075,000.00) equal to the amounts to pay (1) the
16 Settlement Class Members and PAGA Employees pursuant to the terms of the Settlement; (2) the
17 Court-approved Attorneys’ Fees and Costs; (3) the Court-approved Enhancement Payment; (4) the
18 Court-approved Settlement Administration Costs; and (5) the Court-approved payment to the
19 California Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA;
- 20 3. Approving Class Counsel’s request for one-third (1/3) of the Gross Settlement Amount,
21 i.e., Three Hundred Fifty-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty-Three
22 Cents (\$358,333.33) in attorneys’ fees, plus reimbursement of actual costs and expenses in the amount
23 of Twenty-Nine Thousand One Hundred Fifty-Five Dollars and Fifty-Nine Cents (\$29,155.59);
- 24 4. Approving the Enhancement Payment to Plaintiff in the amount of Seven Thousand
25 Five Hundred Dollars and Zero Cents (\$7,500.00) in recognition of his services to the Class Members;
- 26 5. Approving the Settlement Administration Costs to CPT Group, Inc. in the amount of
27 Twelve Thousand Dollars and Zero Cents (\$12,000.00); and

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8. Approving Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) to be paid to the LWDA as seventy-five percent (75%) of the Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to civil penalties under PAGA.

This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Jonathan M. Genish and Miriam L. Schimmel), the Class Representative (Bobby Birdi), and the Settlement Administrator (Chantal Soto-Najera of CPT Group, Inc.), the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: July 17, 2024

BLACKSTONE LAW, APC

By: Jonathan M. Genish
Miriam L. Schimmel
 Attorneys for Plaintiff Bobby Birdi
 and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Bobby Birdi (“Plaintiff” or “Class Representative”) seeks final approval of the class
4 action settlement reached with Defendant Lucid USA, Inc. (“Defendant”). Subject to Court approval,
5 Plaintiff and Defendant (together, the “Parties”) have settled the Released Class Claims and Released
6 PAGA Claims as defined in the Joint Stipulation of Class Action and PAGA Settlement (“Original
7 Agreement”) and Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement
8 (“Amendment No. 1”) (together, “Settlement Agreement” or “Settlement”) for a total amount of One
9 Million Seventy-Five Thousand Dollars and Zero Cents (\$1,075,000.00) (“Gross Settlement
10 Amount”). (See Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Final
11 Approval of Class Action and PAGA Settlement [“Genish Decl.”], ¶¶ 23 & 25, Exhibits 1 & 2).

12 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
13 current and former non-exempt employees of Defendant who worked within the State of California
14 during the Class Period” (“Class” or “Class Members”). (Original Agreement, ¶ 6.b; Genish Decl., ¶
15 27). The “Class Period” is defined as the period from December 3, 2017 through March 23, 2024.
16 (Original Agreement, ¶ 6.f; Genish Decl., ¶ 27). The “Settlement Class Members” consist of all Class
17 Members who did not submit a timely and valid Request for Exclusion. (Original Agreement, ¶ 6.mm;
18 Genish Decl., ¶ 27). The “PAGA Employees” consist of “all current and former non-exempt
19 employees of Defendant who worked within the State of California during the PAGA Period.”
20 (Original Agreement, ¶ 6.x; Genish Decl., ¶ 27). The “PAGA Period” is defined as the period from
21 December 3, 2020 through March 23, 2024. (Original Agreement, ¶ 6.z; Genish Decl., ¶ 27).

22 As discussed herein, the proposed Settlement satisfies all the criteria for final settlement
23 approval under California law because it is fair, adequate, and reasonable. (Genish Decl., Exhibits 1
24 & 2; See also, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford*
25 *Motor Company* (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement
26 confirms that final settlement approval is appropriate. *There have been no objections to and only*
27 *seven (7) requests to opt-out from the Class Settlement.* (Declaration of Chantal Soto-Najera of CPT
28 Group, Inc., Regarding Notice and Settlement Administration [“Soto-Najera Decl.”], ¶¶ 11 & 12).

1 Because the Settlement achieves outstanding results for the Settlement Class Members, the
2 PAGA Employees, and the State of California, Plaintiff respectfully requests, on behalf of the Class
3 and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and
4 reasonable, and enter judgment in accordance with the Settlement’s terms.

5 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

6 Defendant is an American manufacturer of electric vehicles headquartered in Newark,
7 California. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Security Guard from
8 approximately January 2021 to August 2021. (Declaration of Plaintiff Bobby Birdi in Support of
9 Motion for Final Approval of Class Action and PAGA Settlement [“Birdi Decl.”], ¶ 2).

10 On December 3, 2021, Plaintiff provided written notice to the Labor and Workforce
11 Development Agency (“LWDA”) by online submission and to Defendant by U.S. Certified Mail,
12 pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor
13 Code alleged to have been violated by Defendant (“PAGA Letter”). (Genish Decl., ¶ 9).

14 On December 3, 2021, Plaintiff filed a Class Action Complaint in the action entitled *Bobby*
15 *Birdi v. Lucid USA, Inc.*, Alameda County Superior Court Case No. 21CV003541 (“Action”), thereby
16 commencing a putative class action against Defendant. (*Id.*, ¶ 10).

17 On December 20, 2021, Defendant propounded formal written discovery onto Plaintiff
18 (specifically, Request for Production (Set One)), and noticed the deposition of Plaintiff. (*Id.*, ¶ 11).
19 Thereafter, on December 28, 2022, Defendant served an amended notice of deposition of Plaintiff.
20 (*Ibid.*).

21 On January 3, 2022, Plaintiff propounded written formal discovery onto Defendant
22 (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set One), and
23 Requests for Production of Documents (Set One)), noticed the deposition of Defendant’s Person Most
24 Qualified, and served a proposed Belaire-West notice. (*Id.*, ¶ 12).

25 On January 21, 2022, Plaintiff served responses to Defendant’s discovery requests along with
26 a production of documents. (*Id.*, ¶ 13).

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1 On February 1, 2022, the Court entered an Order, which granted Plaintiff leave to file a First
2 Amended Class Action and Representative Action Complaint (“Operative Complaint”) in the Action,
3 which added a cause of action under PAGA. (*Id.*, ¶ 14). The Operative Complaint alleges eight (8)
4 causes of action for violations of the California Labor Code for failure to pay overtime wages, failure
5 to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant
6 rest periods and premiums payments in lieu thereof, failure to pay minimum wages, failure to timely
7 pay wages upon termination, and failure to provide accurate wage statements, for violations of
8 California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California
9 Labor Code violations, and for civil penalties under PAGA based on the aforementioned California
10 Labor Code violations. (*Ibid.*). Pursuant to the Court’s February 1, 2022 Order, the Operative
11 Complaint was deemed filed as of the date of entry of the Order (i.e., February 1, 2022). (*Ibid.*).

12 On February 14, 2022, Plaintiff served an objection to Defendant’s notice of deposition of
13 Plaintiff. (*Id.*, ¶ 15). On February 15, 2022, Plaintiff served supplemental responses to Defendant’s
14 discovery requests. (*Ibid.*).

15 On March 11, 2022, Defendant served responses to Plaintiff’s discovery requests (specifically,
16 Form Interrogatories – General (Set One), Special Interrogatories (Set One), and Requests for
17 Production of Documents (Set One)). (*Id.*, ¶ 16). On July 1, 2022, Defendant served supplemental
18 responses to Plaintiff’s discovery requests (specifically, Form Interrogatories – General (Set One),
19 Special Interrogatories (Set One), and Requests for Production of Documents (Set One)). (*Ibid.*).

20 On July 7, 2022, a Belaire-West notice was mailed to four hundred and seventy-four (474)
21 putative class members by a third-party administrator. (*Id.*, ¶ 17). Thirty-five (35) putative class
22 members timely opted out by the response deadline. (*Ibid.*).

23 On July 19, 2022, Defendant served a production of documents in response to Plaintiff’s
24 discovery requests. (*Id.*, ¶ 18). On July 29, 2022, Defendant served a production of documents in
25 response to Plaintiff’s discovery requests and a further supplemental response to Plaintiff’s discovery
26 requests (specifically, Requests for Production of Documents (Set One)). (*Ibid.*). On November 28,
27 2022, Defendant served a third supplemental response to Plaintiff’s discovery requests (specifically,
28 Request for Production of Documents (Set One)). (*Ibid.*).

1 On January 23, 2023, Blackstone Law, APC defended the deposition of Plaintiff. (*Id.*, ¶ 19).

2 On February 22, 2023, Blackstone Law, APC took the deposition of Defendant's Person Most
3 Knowledgeable (Director of People Operations). (*Id.*, ¶ 20).

4 On February 23, 2023, Blackstone Law, APC took the deposition of Defendant's Person Most
5 Knowledgeable (Senior Manager of Payroll). (*Id.*, ¶ 21).

6 On November 28, 2023, the Parties participated in a formal mediation conducted by Steven J.
7 Rottman, Esq. ("Mediator"), a neutral and respected mediator with extensive experience in complex
8 wage and hour matters. (*Id.*, ¶ 22). After a full day of mediation, and with the help of the Mediator,
9 the Parties were able to reach an agreement to resolve this dispute on a class and representative basis,
10 and shortly thereafter executed a memorandum of understanding memorializing the key settlement
11 terms. (*Ibid.*). Following the mediation, the Parties worked diligently to negotiate and memorialize
12 the terms in a long form settlement agreement. (*Ibid.*).

13 On January 24, 2024, the Parties executed the Original Agreement. (*Id.*, ¶ 23 & Exh. 1).

14 On February 20, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action and
15 PAGA Settlement ("Motion for Preliminary Approval") and supporting documents seeking approval
16 of the settlement reached by the Parties. (*Id.*, ¶ 24). On March 12, 2024, the Court issued a tentative
17 ruling ("March 12, 2024"), which provided direction to the Parties with regards to the Motion for
18 Preliminary Approval. (*Ibid.*). On March 13, 2024, the Court entered a Minute Order, which adopted
19 its March 12, 2024 Tentative Ruling and continued the hearing on Plaintiff's Motion for Preliminary
20 Approval to April 17, 2024 at 2:30 p.m. in Department 23 of the above-captioned Court. (*Ibid.*).

21 On April 3, 2024, the Parties executed Amendment No. 1. (*Id.*, ¶ 25 & Exh. 2).

22 On April 8, 2024, Plaintiff filed a Supplemental Declaration of Jonathan M. Genish in Support
23 of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement. (*Id.*, ¶ 26). On
24 April 18, 2024, the Court entered the Order Granting Preliminary Approval of Class Action and PAGA
25 Settlement ("Preliminary Approval Order"), thereby preliminary approving the terms of the Settlement
26 Agreement, the Notice of Class Action Settlement ("Class Notice"), and the proposed administration
27 procedures and associated deadlines. (*Id.*, ¶ 26 & Exh. 3).

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1 The Parties agree that the Class described herein may be certified for settlement purposes only.
2 If for any reason the Settlement is not approved, the certification will have no force or effect and will
3 immediately be revoked. The Parties further agree that certification for purposes of approving the
4 Settlement Agreement is in no way an admission that class certification is proper under the more
5 stringent standard applied for litigation and that evidence of this limited stipulation for settlement
6 purposes only will not be admissible for any purpose in this or any other proceeding.

7 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

8 The Parties have agreed to settle the Class and PAGA claims at issue in the Action for a non-
9 reversionary Gross Settlement Amount of One Million Seventy-Five Thousand Dollars and Zero Cents
10 (\$1,075,000.00), which is exclusive of employer-side payroll taxes. (Original Agreement, ¶ 6.p;
11 Genish Decl., ¶ 29). The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount
12 of one-third (1/3) of the Gross Settlement Amount, equaling Three Hundred Fifty-Eight Thousand
13 Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$358,333.33); (2) Class Counsel's
14 actual litigation costs and expenses, in the amount of Twenty-Nine Thousand One Hundred Fifty-Five
15 Dollars and Fifty-Nine Cents (\$29,155.59); (3) Settlement Administration Costs in the amount of
16 Twelve Thousand Dollars and Zero Cents (\$12,000.00); (4) Enhancement Payment in the amount of
17 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); and (5) PAGA Amount in the
18 amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). (Original Agreement, ¶¶ 9, 10, 11,
19 & 12; Genish Decl., ¶ 29). After the above Court-approved amounts are deducted from the Gross
20 Settlement Amount, the Settlement Class Members will share in a Net Settlement Amount of
21 approximately Six Hundred Eighteen Thousand Eleven Dollars and Eight Cents (\$618,011.08).
22 (Original Agreement, ¶ 6.u; Genish Decl., ¶ 29).

23 The Settlement does not require Settlement Class Members to submit claims as a prerequisite
24 to receiving their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") nor
25 does it require PAGA Employees to submit claims as a prerequisite to receiving their *pro rata* share
26 of the PAGA Employee Amount ("Individual PAGA Payment"). (Original Agreement, ¶¶ 6.q, 6.s, &
27 34; Genish Decl., ¶ 30). Individual Settlement Shares are calculated by the Settlement Administrator
28 by dividing the Net Settlement Amount by the number of weeks each Settlement Class Member

1 worked for Defendant as a non-exempt employee within the State of California (“Workweeks”) to
2 yield the “Final Workweek Value,” and multiplying each Settlement Class Member’s individual
3 Workweeks by the Final Workweek Value. (Original Agreement, ¶¶ 6.nn & 14.b; Genish Decl., ¶
4 30). Individual PAGA Payments are calculated by the Settlement Administrator by dividing the
5 PAGA Employee Amount (i.e., 25% of the PAGA Amount) by the number of weeks each PAGA
6 Employee worked for Defendant as a non-exempt employee within the State of California during the
7 PAGA Period (“PAGA Workweeks”) to yield the “PAGA Workweek Value,” and multiplying each
8 PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek Value. (Original
9 Agreement, ¶¶ 6.bb & 15; Genish Decl., ¶ 30).

10 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
11 percent (80%) penalties, interest, and non-wage damages. (Original Agreement, ¶ 16; Genish Decl.,
12 ¶ 32). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated
13 to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by
14 the Settlement Administrator. (Original Agreement, ¶ 16; Genish Decl., ¶ 32). The Settlement
15 Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages
16 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their
17 net payment of their Individual Settlement Share (“Individual Settlement Payment”). (Original
18 Agreement, ¶ 6.r. & 16; Genish Decl., ¶ 32). The employer’s share of taxes and contributions in
19 connection with the wages portion of Individual Settlement Shares will be paid by Defendant
20 separately and in addition to the Gross Settlement Amount. (Original Agreement, ¶ 16; Genish Decl.,
21 ¶ 32). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and
22 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Original
23 Agreement, ¶ 16; Genish Decl., ¶ 32).

24 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
25 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
26 thereafter, shall be canceled. (Original Agreement, ¶ 34; Genish Decl., ¶ 33). Any funds associated
27 with such canceled checks will be distributed by the Settlement Administrator to Legal Aid at Work
28 in accordance with California Code of Civil Procedure Section 384. (Ibid).

1 Upon the full funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully,
2 finally, and forever released, settled, compromised, relinquished, and discharged Plaintiff's Released
3 Claims; Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever
4 released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class
5 Claims; and Plaintiff, the LWDA with respect to all PAGA Employees, and the State of California
6 with respect to all PAGA Employees will be deemed to have fully, finally, and forever released,
7 settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA
8 Claims. (Original Agreement, ¶ 35).

9 "Plaintiff's Released Claims" means any and all claims, known and unknown, under federal,
10 state, and/or local law, statute, ordinance, regulation, common law, or other source of law, which
11 Plaintiff, at the time of execution of the Original Agreement, had or claimed to have or may have
12 against the Released Parties, including but not limited to claims arising from or related to his
13 employment with Defendant and his compensation while an employee of Defendant.

14 Plaintiff's Released Claims include all claims, whether known or unknown.
15 Even if Plaintiff discovers facts in addition to or different from those that he now knows or believes
16 to be true with respect to the subject matter of Plaintiff's Released Claims, those claims will remain
17 released and forever barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights,
18 and benefits of Section 1542 of the California Civil Code, which reads:

19 A general release does not extend to claims that the creditor or
20 releasing party does not know or suspect to exist in his or her favor
21 at the time of executing the release and that, if known by him or her,
22 would have materially affected his or her settlement with the debtor
or released party.

(Original Agreement, ¶ 6.cc).

23 "Released Class Claims" means any and all claims, debts, liabilities, demands, obligations,
24 guarantees, costs, expenses, attorneys' fees, damages, or causes of action which were alleged or which
25 could have been alleged based on the factual allegations in the Operative Complaint, arising during
26 the Class Period, under any federal, state, or local law, and shall specifically include claims for
27 Defendant's alleged failure to: pay overtime and minimum wages, properly calculate the regular rate
28 of pay, pay for all hours worked due to time rounding, provide compliant meal and rest periods and

1 associated premium payments, timely pay wages during employment and upon termination, provide
2 accurate wage statements, and maintain complete and accurate payroll records in violation of
3 California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
4 and 1198, and Industrial Welfare Commission Wage Orders, and all claims for attorneys’ fees and
5 costs, penalties, and statutory interest in connection therewith, California Business and Professions
6 Code sections 17200, *et seq.*, and any other claims, including claims for statutory penalties, pertaining
7 to the Class Members. (*Id.*, ¶ 6.ff).

8 “Released PAGA Claims” means any and all claims arising from any of the factual allegations
9 in the PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys
10 General Act of 2004, California Labor Code sections 2698 *et seq.*, including all claims for attorneys’
11 fees and costs related thereto, for Defendant’s alleged failure to: pay overtime and minimum wages,
12 properly calculate the regular rate of pay, pay for all hours worked due to time rounding, provide
13 compliant meal and rest periods and associated premium payments, timely pay wages during
14 employment and upon termination, provide complaint wage statements, and maintain complete and
15 accurate payroll records in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
16 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and Industrial Welfare Commission Wage
17 Orders. (Amendment No. 1, ¶ A).

18 “Released Parties” means Defendant and each of its past and present agents, officers, directors,
19 partners, representatives, exempt employees, shareholders, stockholders, attorneys, parents,
20 subsidiaries, divisions, assigns, predecessors, successors, insurers, joint ventures, and joint employers.
21 (Original Agreement, ¶ 6.hh).

22 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

23 The Court-approved settlement administrator, CPT Group, Inc. (“CPT” or “Settlement
24 Administrator”), has taken all necessary steps to effectuate the notice and settlement administration
25 process, as set forth in the Preliminary Approval Order.

26 On April 18, 2024, CPT received the Court-approved text for the Class Notice from Class
27 Counsel. (Soto-Najera Decl., ¶ 4).

28 ///

1 On May 9, 2024, CPT received the Class List from Defendant's Counsel that contained the
2 following information for each Class Member: full name, last known mailing address, Social Security
3 number, number of Workweeks, and number of PAGA Workweeks. (*Id.*, ¶ 4). The Class List
4 contained seven-hundred and ninety-seven (797) individuals identified as Class Members. (*Ibid*).

5 On May 13, 2024, CPT conducted an NCOA search for purposes of confirming and obtaining
6 the most updated and accurate addresses on the Class List as possible. (*Id.*, ¶ 6). A search of this
7 database provided updated addresses for any individual who had moved in the previous four years and
8 notified the U.S. Postal Service of their change of address. (*Ibid*). As a result of the NCOA, CPT was
9 able to locate seventy-five (75) updated addresses. (*Ibid*). After updating the mailing addresses
10 through the NCOA, the Class Notices were enclosed in an envelope with the Class Member's name
11 and known address printed on the envelope. (*Ibid*).

12 On May 16, 2024, the Class Notices were mailed via U.S. First Class Mail to all Class
13 Members. (*Id.*, ¶ 7). Thirty-five (35) Class Notices were returned to CPT by the U.S. Post Office,
14 two (2) of which had a forwarding address provided by the U.S. Post Office. (*Id.*, ¶ 9). CPT performed
15 a skip trace on all returned mail without a forwarding address using Accurant, one of the most
16 comprehensive address databases available. (*Ibid*). It utilizes hundreds of different databases supplied
17 by credit reporting agencies, public records, and a variety of other national databases. (*Ibid*). As a
18 result of skip trace effort, or re-mail requests from the Class Members themselves, a total of thirty (30)
19 Class Notices were re-mailed to date. (*Ibid*). CPT reports five (5) undeliverable Class Notices. (*Ibid*).

20 Class Members had forty-five (45) calendar days to submit a Request for Exclusion, Notice of
21 Objection, or and/or Workweeks Dispute ("Response Deadline"). (Original Agreement, ¶ 6.jj). The
22 Response Deadline was July 1, 2024. (Soto-Najera Decl., ¶ 7). The Settlement Administrator did not
23 receive any Workweeks Disputes or Notices of Objection and only seven (7) Requests for Exclusion.
24 (*Id.*, ¶¶ 10-12).

25 To date, there are seven hundred and ninety (790) Class Members who did not submit timely
26 and valid Requests for Exclusions and are therefore deemed to be Settlement Class Members,
27 representing 99.12% of the Class. (*Id.*, ¶ 13). The total number of Workweeks worked by all
28 Settlement Class Members is 47,974. (*Id.*, ¶ 15). The highest Individual Settlement Share is estimated

1 to be \$4,159.89, the average Individual Settlement Share is estimated to be \$774.89, and the lowest
2 Individual Settlement Share is estimated to be \$12.76. (Ibid).¹ These amounts are subject to
3 employee-side taxes and withholdings. (Ibid).

4 To date, there are six hundred and ninety-eight (698) individuals identified as PAGA
5 Employees. (*Id.*, ¶ 13). The total number of PAGA Workweeks worked by all PAGA Employees is
6 37,763. (*Id.*, ¶ 16). The highest Individual PAGA Payment is estimated to be \$57.27, the average
7 Individual PAGA Payment is estimated to be \$17.91, and the lowest Individual PAGA Payment is
8 estimated to be \$0.33. (*Id.*, ¶ 16).

9 **V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA**

10 On February 20, 2024, Class Counsel submitted a copy of the Original Agreement, and on
11 April 8, 2024, submitted a copy of Amendment No. 1, to the LWDA through its online submission
12 portal in compliance with California Labor Code § 2699(1)(2). (Genish Decl., ¶ 34). The LWDA has
13 not objected or otherwise responded to the submissions. (Ibid).

14 **VI. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL**

15 **A. The Legal Standard for Final Approval**

16 Before granting final approval of a class action settlement, the Court must review the
17 settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
18 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
19 strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation,
20 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
21 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
22 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
23 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil*
24 *Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness
25 exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and
26

27
28 ¹ The actual highest, average, and lowest Individual Settlement Shares will be larger than the amounts stated in the Soto-Najera Decl. because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than \$35,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$5,844.41 will be part of the Net Settlement Amount).

1 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
2 in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245;
3 *Dunk*, 48 Cal.App.4th at 1802). “The settlement or fairness hearing is not to be turned into a trial or
4 rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the
5 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty
6 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
7 settlements.” (*Officers for Justice*, *supra*, 688 F.2d at 625).

8 **B. The Settlement Should be Finally Approved**

9 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
10 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
11 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
12 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 35). The Parties engaged
13 in extensive formal and informal discovery prior to reaching a settlement at the mediation. (*Ibid*).

14 **C. The Settlement is Fair and Reasonable**

15 Courts typically assess the status of discovery in determining whether a class action settlement
16 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
17 Defendant produced putative class members’ time and pay data and records, as well as Defendant’s
18 employee handbooks, relevant wage and hour policies, and information regarding the total number of
19 putative class members, the number of current versus former employees, the total workweeks worked
20 by the putative class members, and the average rate of pay for the putative class members. (Genish
21 Decl., ¶ 35). This allowed Class Counsel to conduct an informed assessment and analysis of the
22 strengths and weaknesses of the claims and the potential class-wide damages. (*Ibid*). Plaintiff’s
23 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker*
24 *Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168
25 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

26 Based on the information exchanged, the Parties extensively briefed issues regarding class
27 certification and liability and provided their analyses to the Mediator who helped the Parties debate
28 the strengths and weakness of their respective positions. (Genish Decl., ¶ 36). After a full day of

1 mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve
2 this dispute on a class and representative basis. (Ibid). Additionally, settlement negotiations were
3 conducted by highly capable and experienced counsel. (Ibid). Plaintiff engaged in additional
4 negotiations in order to finalize the Settlement Agreement presently before the Court. (Ibid). At all
5 times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if
6 the Parties had been unable to reach a favorable resolution. (Ibid). Class Counsel are respected
7 members of the California State Bar with strong records of vigorous and effective advocacy and are
8 experienced in handling complex wage and hour class action litigation. (Genish Decl., ¶¶ 3-8;
9 Declaration of Miriam L. Schimmel [“Schimmel Decl.”], ¶¶ 3-10). Accordingly, Class Counsel had
10 sufficient information and experience to act intelligently in negotiating the Settlement.

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

19 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal
20 and factual grounds for defending the Action. Based upon Class Counsel’s experience litigating
21 similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class
22 certification and the merits of the Action absent a settlement.

23 Defendant denied and continues to deny any liability and wrongdoing of any kind associated
24 with the claims alleged in the Action, and further denies that class certification is appropriate for any
25 purpose other than the Settlement. (Genish Decl., ¶ 37). Defendant believes that it would ultimately
26 prevail in the Action. (Ibid). Defendant proffered defenses to both certification and to the merits of
27 Plaintiff’s claims. (Ibid). Defendant contended that Plaintiff’s claims are not suitable for class
28 certification because individual issues would predominate should this case go to trial. (Ibid). As with

all class actions, these complex cases raise difficult management and proof issues and, accordingly, there is a significant risk that the Court may deny class certification. (Ibid).

Class Counsel was aware of Defendant's defenses and arguments and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class and/or representative adjudication. (*Id.*, ¶ 38). Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. (Ibid). Plaintiff has also considered the Parties' settlement discussions, as well as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and employment matters. (Ibid).

Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. (*Id.*, ¶ 39). In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain declarations. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

In light of the Parties' respective legal positions and the risks of continued litigation, the Gross Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable. (*Id.*, ¶ 40).

VII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., \$358,333.33) for fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling \$29,155.59 incurred in the prosecution of the Action. (Genish Decl., ¶ 41). The requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for

1 the Class Members. (Ibid). Class Counsel’s requested fee award is addressed as follows but is more
2 fully discussed in Plaintiff’s Motion for Attorneys’ Fees and Costs, Enhancement Payment, and
3 Settlement Administration Costs (“Motion for Attorneys’ Fees and Costs”) filed concurrently
4 herewith. (Ibid).

5 **A. Plaintiff’s Fee Request of One-Third (1/3) of the Gross Settlement Amount is Proper**
6 **Under the Common Fund Doctrine**

7 California state and federal courts have recognized that in a class action creating a common
8 fund distributed to the class, an appropriate method for determining an award of attorneys’ fees is
9 based on a percentage of the total value of benefits to the class. (*Laffitte v. Robert Half Int’l Inc.*
10 (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van*
11 *Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 577 F.2d 759,
12 769). In *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein
13 class counsel obtained a \$19 million non-reversionary settlement on behalf of the class, the California
14 Supreme Court approved the use of the percentage of fund or common fund method to award one-
15 third of the settlement amount or \$6,333,333.33 to class counsel for attorneys’ fees. The Court stated:

16 Whatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d 25, [], or the
17 Court of Appeal cases that followed, we clarify today that use of the percentage method
18 to calculate a fee in a common fund case, where the award serves to spread the attorney
19 fee among all the beneficiaries of the fund, does not in itself constitute an abuse of
20 discretion. We join the overwhelming majority of federal and state courts in holding
21 that when class action litigation established a monetary fund for the benefit of the class
22 members, and the trial court in its equitable powers awards class counsel a fee out of
23 that fund, the court may determine the amount of a reasonable fee by choosing an
24 appropriate percentage of the fund created. The recognized advantages of the percentage
25 method - including relative ease of calculation, alignment of incentives between counsel
26 and the class, a better approximation of market conditions in a contingency case, and
27 the encouragement it provides counsel to seek an early settlement and avoid
28 unnecessarily prolonging the litigation [] convince us the percentage method is a
valuable tool that should not be denied our trial courts.

(*Laffitte*, 1 Cal.5th at 503).

Under the “common fund” doctrine, “a litigant or a lawyer who recovers a common fund for
the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the
fund as a whole.” (*Boeing*, 444 U.S. at 478). The Supreme Court explained: “The doctrine rests on
the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are

1 unjustly enriched at the successful litigants' expense. Jurisdiction over the fund involved in the
2 litigation allows a court to prevent this inequity by assessing attorney's fees against the entire fund,
3 thus spreading fees proportionately among those benefitted by the suit." (Ibid). Thus, the common
4 fund doctrine ensures that each member of the class contributes proportionately to the payment of the
5 attorneys' fees recovered from monetary payments that the prevailing party recovered in the lawsuit.
6 "Put another way, in common fund cases, a variant of the usual rule applies, and the winning party
7 pays his or her own attorneys' fees; in fee-shifting cases, the usual rule is rejected and the losing party
8 covers the bill." (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt.*
9 *L.P.* (9th Cir. 2002) 301 F.3d 1115).

10 The Supreme Court noted that several courts have expressed frustration with the alternative
11 "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and
12 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; see *Lealao v. Beneficial California, Inc.*
13 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
14 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
15 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
16 an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources.
17 (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the
18 percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82
19 Cal.App.4th at 30-31; see e.g., *In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79
20 (approving attorney's fee of 33%)).

21 A fee of one-third (1/3) of the Gross Settlement Amount (i.e., \$358,333.33) is easily within the
22 range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to
23 50%, depending on the circumstances of the case. (See *In re Activision Sec. Litig.*, 723 F. Supp. at
24 1378). According to Professor Newberg: "No general rule can be articulated on what is a reasonable
25 percentage of a common fund...Usually 50 per cent of the fund is the upper limit on a reasonable fee
26 award from a common fund, in order to assure that fees do not consume a disproportionate part of the
27 recovery obtained for the class, though somewhat larger percentages are not unprecedented."
28 (Newberg on Class Actions (4th Ed.), §14.6). Class Counsel's requested fee, as more fully discussed

1 in Plaintiff's Motion for Attorney's Fees and Costs, is reasonable and falls well within the historical
2 range of attorney's fee awards under the common fund theory. Based on Class Counsel's showing of
3 reasonableness, the Court should approve the requested fees pursuant to the common fund approach.

4 **B. Plaintiff's Fee Request is Reasonable Under the Lodestar Method**

5 In a common fund settlement "[t]he lodestar method is merely a cross-check on the
6 reasonableness of a percentage figure." (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
7 1050, n.5). In this case, consideration of Class Counsel's lodestar as a cross-check to the percentage
8 figure also strongly supports the reasonableness of the requested fee award. The base amount is then
9 adjusted in light of various factors. (*Serrano v. Priest*, 20 Cal.3d at 48). Class Counsel provides a
10 cross-check lodestar analysis in Plaintiff's Motion for Attorney's Fees and Costs filed concurrently
11 herewith.

12 **C. Plaintiff's Cost Request is Reasonable**

13 Class Counsel seeks reimbursement of a total amount of \$29,155.59 in costs and expenses in
14 this matter, which includes reasonable future costs for filing the Motion. (Genish Decl., ¶ 41 & Exh.
15 4). All costs and expenses were reasonably incurred in prosecution of this matter.

16 **VIII. THE REQUESTED ENHANCEMENT PAYMENT TO PLAINTIFF IS**
17 **REASONABLE**

18 The named Plaintiff should be awarded an Enhancement Payment in the amount of Seven
19 Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for his services as the Class
20 Representative and the risks in connection with that role. (Genish Decl., ¶ 44). Enhancement awards
21 in wage and hour cases typically range from \$5,000.00 to \$20,000.00, although some awards are
22 higher. (Ibid). Often, multiple class representatives receive awards in the above range. (*See e.g.*,
23 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an
24 enhancement request of \$10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142
25 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir.
26 1974) ["We also think there is something to be said for rewarding those drivers who protect and help
27 to bring rights to a group of employees who have been the victims of discrimination."]). Here, the
28 requested Enhancement Payment is modest, reasonable, and should be approved.

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1 As set forth in detail in Plaintiff's declaration filed herewith, Plaintiff has performed significant
2 services on behalf of the Class during the litigation. (*See*, generally, Birdi Decl.). Class Counsel
3 cannot understate the importance of the role of an employee who is willing to search out an attorney
4 and step forward to assume the risk of litigation and retaliation in order to represent a class and put
5 the interests of the class before his or her interests. Plaintiff has understood that this is a class action
6 where he is serving as the Class Representative and must protect the Class Members' interests. (Birdi
7 Decl., ¶ 10). Plaintiff was the catalyst to the benefit reached for the Class Members, and has actively
8 protected the Class Members' interests during the pendency of this matter and will continue to do so
9 even if the case was required to go to trial. (*Ibid*). Plaintiff spent numerous hours participating in this
10 matter by searching for an attorney, communicating with his attorneys on numerous occasions,
11 searching for and producing relevant documents related to his employment, responding to his
12 attorneys' telephone inquiries, assisting his attorneys with responding to written discovery, preparing
13 for and attending his deposition, reviewing the settlement documents, and approving the Settlement
14 on behalf of all Class Members. (*See*, generally, Birdi Decl.).

15 Plaintiff also undertook the significant risks associated with acting as a class representative,
16 including without limiting to the risk for retaliation by future employers who may not approve that he
17 sued their former employer. (*Id.*, ¶ 7).

18 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by
19 Plaintiff in litigating this matter, Settlement Class Members will automatically be issued a payment
20 for their claims. It appears that the Settlement Class Members recognize this enhancement was
21 justified because since the time the Class received notice of the requested Enhancement Payment, no
22 one has objected to the request. Thus, the Enhancement Payment to Plaintiff is warranted to
23 compensate him for his time and effort, the fear and stress associated with assuming the responsibility
24 of serving as the Class Representative, and the concrete risks he assumed as the Class Representative.

25 **IX. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE**
26 **REASONABLE**

27 In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court approved,
28 Settlement Administration Costs not to exceed Fourteen Thousand Dollars and Zero Cents
(\$14,000.00). (Genish Decl., ¶ 45). CPT is the approved Settlement Administrator. (*Ibid*). It is an

1 experienced class administrator and has adequately performed the administration tasks required by the
2 Preliminary Approval Order. CPT's *actual* costs to administer the Settlement are only Twelve
3 Thousand Dollars and Zero Cents (\$12,000.00. (Soto-Najera Decl., ¶ 17 & Exh. B). Based thereon,
4 the requested costs should be approved.

5 **X. THE PROPOSED LWDA ALLOCATION IS REASONABLE**

6 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
7 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
8 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
9 should be approved. As part of the Settlement, Defendant has agreed to pay Fifty Thousand Dollars
10 and Zero Cents (\$50,000.00) to settle the claims of the PAGA Employees brought pursuant to PAGA,
11 of which the payment of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00)
12 (75% of the PAGA Amount) will be paid to the LDWA for education and enforcement purposes.
13 (Genish Decl., ¶ 46).

14 It is extremely common in approved wage and hour class action cases that settle that only a
15 small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to
16 class members." (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)
17 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc.* (E.D.
18 Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving
19 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji, LLC* (N.D.
20 Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties out of a
21 total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012
22 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in PAGA
23 penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.
24 Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of
25 \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells Fargo Invs.,*
26 *LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final
27 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000]). Like here,
28 in these approved settlements, the Parties generally maximized statutory penalties and minimized

1 PAGA penalties to focus on claims to the Class Members, the persons who actually suffered the
2 California Labor Code violations. (Genish Decl., ¶ 47).

3 **XI. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE**

4 California law vests the Court with broad discretion in fashioning an appropriate notice
5 program. (See California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
6 74). To protect the rights of absent class members, the parties must provide class members with the
7 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
8 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
9 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
10 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
11 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
12 the action and afford them an opportunity to present their objections"])). The content and method of
13 the notice should be designed to apprise the class members of the terms of the proposed settlement
14 and of the class members' rights regarding the settlement. (See *Mullane, supra*, 339 U.S. at 314;
15 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
16 F. Supp. 364, 378).

17 The Class Notice approved by the Court met these requirements: it identified the Parties and
18 described the Action, the Class, the Gross Settlement Amount, the proposed method for distribution
19 of the Gross Settlement Amount, the amounts proposed to be paid as the Enhancement Payment to
20 Plaintiff, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees
21 and Costs to Class Counsel. (Genish Decl., ¶ 48; see also Soto-Najera Decl., Exhibit A thereto). The
22 Class Notice described the proposed Settlement with enough specificity to allow each Class Member
23 to make an informed choice whether to accept and participate in it. (Ibid). It also explained how and
24 when Class Members may object to or opt out of the Class Settlement. (Ibid). Finally, the Class
25 Notice provided the date for the hearing on final approval of the Settlement and informed Class
26 Members how to obtain additional information about the Settlement. (Ibid).

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Dated: July 17, 2024

BLACKSTONE LAW, APC

By: 