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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 Tara Desautels
Department 23

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

Reservation ID: 197750242423
Date: March 13, 2024
Time: 2:30 p.m.
Dept.: 23

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

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **March 13, 2024** at **2:30 p.m.** in **Department 23** of the above-captioned Court located at 1221 Oak Street, Oakland, California 94612 pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiff Bobby Birdi (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiff and Defendant Lucid USA, Inc. (“Defendant”).

Plaintiff requests that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) attached as Exhibit 2 to the Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement (“Genish Decl.”);

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiff Bobby Birdi as the Class Representative for Settlement purposes;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as Exhibit A to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member, directing Defendant to furnish their full name, last known mailing address, Social Security number, number of Workweeks, and number of PAGA Workweeks (if applicable) to the Settlement Administrator within twenty-one (21) calendar days after entry of the order granting preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

9. Setting a Final Approval Hearing.

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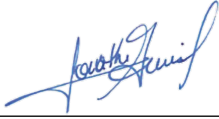
1 Pursuant to California Labor Code section 2699(1)(2) and concurrently with the filing of this
2 Motion, a copy of the Settlement was submitted to the California Labor and Workforce Development
3 Agency (“LWDA”) via online submission through the LWDA’s website. (Genish Decl., ¶ 56).

4 This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the
5 Declaration of Jonathan M. Genish, the Declaration of Plaintiff Bobby Birdi, the pleadings and other
6 records on file with the Court in this matter, and any other further evidence or argument that the Court
7 may properly receive at or before the hearing.

8 Respectfully submitted,

9 Dated: February 20, 2024

BLACKSTONE LAW, APC

10
11 By: 

Jonathan M. Genish
Attorneys for Plaintiff Bobby Birdi

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Bobby Birdi (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class
4 Action and PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiff
5 and Defendant Lucid USA, Inc. (“Defendant”) (together, with Plaintiff, the “Parties”). (Declaration of
6 Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA
7 Settlement [“Genish Decl.”], Exh. 2). The Settlement terms are outlined as follows:

- 8
- 9 • Class Size: Approximately 893 individuals (as of November 28, 2023).
 - 10 • Gross Settlement Amount: One Million Seventy-Five Thousand Dollars and Zero Cents
11 (\$1,075,000.00).
 - 12 • Settlement Administration Costs: Not to exceed Fourteen Thousand Dollars and Zero Cents
13 (\$14,000.00), to be paid from the Gross Settlement Amount.
 - 14 • Enhancement Payment: Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)
15 to Plaintiff Bobby Birdi, to be paid from the Gross Settlement Amount.
 - 16 • PAGA Amount: Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross
17 Settlement Amount, 75% of which will be paid to the Labor and Workforce Development
18 Agency (“LWDA”) and the remaining 25% to be paid to the PAGA Employees.
 - 19 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount
20 (\$358,333.33 if the Gross Settlement Amount is \$1,075,000.00) plus actual litigation costs
21 and expenses not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00), to
22 be paid from the Gross Settlement Amount.
 - 23 • Estimated Net Settlement Amount: Six Hundred Ten Thousand One Hundred Sixty-Six
24 Dollars and Sixty-Seven Cents (\$610,166.67) to be distributed to Settlement Class Members.

25 As set forth herein, the Settlement is the product of informed discovery and arms-length
26 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
27 respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the
28 Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing date
for final settlement approval, among other requested relief.

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II. FACTUAL AND PROCEDURAL BACKGROUND

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

On December 3, 2021, Plaintiff provided written notice to the LWDA by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Genish Decl., ¶ 9; Exh. 1 thereto).

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

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

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

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

On February 1, 2022, the Court entered an Order, which granted Plaintiff leave to file a First Amended Class Action and Representative Action Complaint (“Operative Complaint”) in the Action, which added a cause of action under PAGA. (*Id.*, ¶ 14). The Operative Complaint alleges eight (8) causes of action for violations of the California Labor Code for failure to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, and failure to provide accurate wage statements, for violations of California

Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations. (Ibid). Pursuant to the Court’s February 1, 2022 Order, the Operative Complaint was deemed filed as of the date of entry of the Order (i.e., February 1, 2022). (Ibid).

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

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

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

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

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

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

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

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

8 On January 24, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 23; Exh. 2 thereto).

9 **III. THE SETTLEMENT TERMS**

10 **A. Class Definition**

11 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
12 current and former non-exempt employees of Defendant who worked within the State of California during
13 the Class Period” (“Class Members” or “Class”). (Genish Decl., ¶ 24; Settlement Agreement, ¶ 6.b). The
14 Class Period is defined as the period from December 3, 2017 through the date on which the Court grants
15 preliminary approval of the Settlement or the date that is sixty (60) calendar days after the date Plaintiff
16 executes the Settlement Agreement, whichever is earlier, subject to Paragraph 13 of the Settlement
17 Agreement. (Genish Decl., ¶ 24; Settlement Agreement, ¶ 6.f). Based on information provided by
18 Defendant, as of November 28, 2023, it is estimated that there are a total of eight hundred and ninety-
19 three (893) Class Members. (Genish Decl., ¶ 24).

20 **B. Amount of Settlement**

21 The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint
22 for a non-reversionary Gross Settlement Amount of One Million Seventy-Five Thousand Dollars and Zero
23 Cents (\$1,075,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 25; Settlement
24 Agreement, ¶ 6.p).

25 **C. Allocation and Funding of the Gross Settlement Amount**

26 The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and
27 other allocations. (Genish Decl., ¶ 15; Settlement Agreement, ¶ 6.p). The Gross Settlement Amount
28 includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,

1 \$358,333.33 if the Gross Settlement Amount is \$1,075,000.00); (2) Class Counsel’s actual litigation costs
2 and expenses, not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00); (3) Settlement
3 Administration Costs, not to exceed Fourteen Thousand Five Hundred Dollars and Zero Cents
4 (\$14,000.00); (4) Enhancement Payment in the amount of Seven Thousand Five Dollars and Zero Cents
5 (\$7,500.00); and (5) PAGA Amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). (Genish
6 Decl., ¶ 25; Settlement Agreement, ¶¶ 6.p, 9, 10, 11, and 12). After the above-estimated amounts are
7 deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class
8 Members is currently estimated to be Six Hundred Ten Thousand One Hundred Sixty-Six Dollars and
9 Sixty-Seven Cents (\$610,166.67). (Genish Decl., ¶ 25). Additionally, 25% of the PAGA Amount
10 (“PAGA Employee Amount”), which is \$12,500.00 out of \$50,000.00 will be fully distributed to all
11 current and former non-exempt employees of Defendant who worked within the State of California during
12 the PAGA Period (“PAGA Employees”). (Genish Decl., ¶ 25; Settlement Agreement, ¶¶ 6.p, 6.x, 6.y,
13 and 11). The “PAGA Period” is defined as the period from December 3, 2020 through the date on which
14 the Court grants preliminary approval of the Settlement or the date that is sixty (60) calendar days after
15 the date Plaintiff executes the Settlement Agreement, whichever is earlier, subject to Paragraph 13 of the
16 Settlement Agreement. (Genish Decl., ¶ 25; Settlement Agreement, ¶ 6.z).

17 Defendant has represented that the Class Members worked a total of 50,032 workweeks during
18 the period from December 3, 2017 through November 28, 2023. (Genish Decl., ¶ 26; Settlement
19 Agreement, ¶ 13). If it is determined by the Settlement Administrator that the total number of Workweeks
20 worked by the Class Members during the Class Period actually exceeds 50,032 by more than 10% (i.e.,
21 if the Workweeks exceed 55,035), Defendant, at its option, can either choose to: (a) cut off the end date
22 for the Class Period and PAGA Period as of the date on which the number of Workweeks does not exceed
23 55,025, or (b) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase
24 in the number of Workweeks worked by the Class Members above 10% (i.e., if the number of Workweeks
25 increases by 11%, then the Gross Settlement Amount will increase by 1%). (Genish Decl., ¶ 26;
26 Settlement Agreement, ¶ 13).

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28 ///

1 The Net Settlement Amount will be distributed and paid to all Class Members who do not submit
2 a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the
3 number of weeks each Class Member worked for Defendant as a non-exempt employee within the State
4 of California during the Class Period (“Workweeks”). (Genish Decl., ¶ 27; Settlement Agreement, ¶¶
5 6.mm and 6.nn). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible
6 to receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement
7 Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 27; Settlement
8 Agreement, ¶¶ 6.s and 14).

9 The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata*
10 basis based on the number of weeks each PAGA Employee worked for Defendant as a non-exempt
11 employee within the State of California during the PAGA Period (“PAGA Workweeks”). (Genish Decl.,
12 ¶ 28; Settlement Agreement, ¶¶ 6.bb and 11). The *pro rata* share of the PAGA Employee Amount that a
13 PAGA Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”)
14 will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement.
15 (Genish Decl., ¶ 28; Settlement Agreement, ¶¶ 6.q and 15).

16 Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty
17 percent (80%) penalties, interest, and non-wage damages. (Genish Decl., ¶ 29; Settlement Agreement, ¶
18 16). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to
19 penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the
20 Settlement Administrator. (Genish Decl., ¶ 29; Settlement Agreement, ¶ 16). The Settlement
21 Administrator will withhold the employee’s share of taxes and withholdings with respect to the wages
22 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net
23 payment of their Individual Settlement Share (“Individual Settlement Payment”). (Genish Decl., ¶ 29;
24 Settlement Agreement, ¶¶ 6.r and 16). The employer’s share of taxes and contributions in connection
25 with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in
26 addition to the Gross Settlement Amount. (Genish Decl., ¶ 29; Settlement Agreement, ¶¶ 6.p and 16).
27 Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be
28 reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 29;

1 Settlement Agreement, ¶ 16).

2 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish Decl.,
3 ¶ 30; Settlement Agreement, ¶¶ 6.p and 34). The Net Settlement Amount will be fully distributed to
4 Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA
5 Employees, in accordance with the Settlement Agreement. (Genish Decl., ¶ 30; Settlement Agreement,
6 ¶¶ 14 and 15). No money will revert to Defendant. (Genish Decl., ¶ 30; Settlement Agreement, ¶ 6.p).

7 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
8 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
9 thereafter, shall be canceled. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 34). Any funds associated
10 with such canceled checks will be distributed by the Settlement Administrator to Legal Aid at Work (the
11 proposed *cy pres* recipient) in accordance with California Code of Civil Procedure Section 384. (Genish
12 Decl., ¶ 31; Settlement Agreement, ¶ 34). The Parties and their counsel have each represented that they
13 do not have any financial interest in, or otherwise have a relationship with, the proposed *cy pres* recipient
14 that could create a conflict of interest. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 34).

15 **D. Released Claims**

16 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
17 Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
18 and discharged the Released Parties of all Released Class Claims. (Settlement Agreement, ¶ 35).

19 Upon the full funding of the Gross Settlement Amount, Plaintiff, the LWDA with respect to all
20 PAGA Employees, and the State of California with respect to all PAGA Employees will be deemed to
21 have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released
22 Parties of all Released PAGA Claims. (*Id.*, ¶ 36).

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 the
26 Class Period, under any federal, state, or local law, and shall specifically include claims for Defendant’s
27 alleged failure to: pay overtime and minimum wages, properly calculate the regular rate of pay, pay for
28 all hours worked due to time rounding, provide compliant meal and rest periods and associated premium

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

7 “Released PAGA Claims” means any and all claims arising from any of the factual allegations in
8 the PAGA Letter and/or the Operative Complaint, arising during the PAGA Period, for civil penalties
9 under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, including
10 all claims for attorneys' fees and costs related thereto, for Defendant's alleged failure to: pay overtime
11 and minimum wages, properly calculate the regular rate of pay, pay for all hours worked due to time
12 rounding, provide compliant meal and rest periods and associated premium payments, timely pay wages
13 during employment and upon termination, provide complaint wage statements, and maintain complete
14 and accurate payroll records in violation of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7,
15 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198, and Industrial Welfare Commission Wage Orders.
16 (*Id.*, ¶ 6. gg).

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

20 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

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

26 The review and approval of a proposed class action settlement involves a two-step process. *See*
27 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement and the
28 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the

1 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
2 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
3 settlement is fair, reasonable, and adequate. *Id.*

4 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
5 *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). Rather,
6 the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the proposed
7 settlement is within the range of possible approval and, as a result, “whether there is any reason to notify
8 the class members of the proposed settlement and to proceed with a fairness hearing.” A presumption of
9 fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and
10 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
11 similar litigation; and (4) the percentage of objectors is small. *See In re Microsoft I-V Cases*, 135 Cal.
12 App. 4th 706, 723 (2006).

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

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

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

22 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
23 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
24 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the Parties’ settlement negotiations
25 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 32). The Settlement was
26 reached following a full day of mediation with a highly respected mediator with substantial experience
27 mediating wage and hour cases. (*Id.*, ¶ 22). At all times, Plaintiff was willing and prepared to litigate
28 this matter through class certification and trial if the Parties had been unable to reach a favorable

1 resolution. (*Id.*, ¶ 52).

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

3 Courts typically assess the status of discovery in determining whether a class action settlement
4 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. Prior to mediation,
5 Defendant produced putative class members' time and pay data and records, as well as Defendant's
6 employee handbooks, relevant wage and hour policies, and information regarding the total number of
7 putative class members, the number of current versus former employees, the total workweeks worked by
8 the putative class members, and the average rate of pay for the putative class members. (Genish Decl., ¶
9 33).

10 This allowed Plaintiff's counsel to conduct an informed assessment and analysis of the strengths
11 and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 34). Based on information
12 exchanged, the Parties extensively briefed issues regarding class certification and liability and provided
13 their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective
14 positions. (*Id.*, ¶ 35). Additionally, settlement negotiations were conducted by highly capable and
15 experienced counsel. (Genish Decl., ¶¶ 1-8). Accordingly, Class Counsel had sufficient information and
16 experience to act intelligently in negotiating the Settlement.

17 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions**
18 **and Recovery Risks**

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

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

5 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

6 Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure
7 to be approximately \$15,665,816, assuming the litigation was successful at trial on all claims at issue and
8 every employee had a violation for each claim on every shift worked, and then reduced this exposure
9 analysis based on the challenges facing the likelihood of obtaining class certification, prevailing at trial,
10 and other attendant risks. (Genish Decl., ¶ 36). This estimate is based off an estimated maximum liability
11 for all claims at issue and the total aggregate workweeks during the relevant time period, less interest,
12 and based on the analysis of the data which was extrapolated out for all class members across the entire
13 putative class period, which included: \$1,858,479 for meal period violations less meal period premiums
14 paid; \$5,450,541 for rest period violations; \$2,444,180 for unpaid overtime wages; \$4,166,066 for
15 waiting time penalties; and \$1,746,550 in wage statement penalties. (Ibid). Plaintiff further estimated
16 that Defendant faced an additional exposure of \$1,780,200 in potential, non-stacked (i.e., one penalty,
17 per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with
18 the PAGA penalties, Defendant's maximum potential exposure totaled \$17,446,016 in damages. (Ibid).

19 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

20 While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a
21 recovery existed. Defendant contended that Plaintiff's claims are not suitable for class certification
22 because individual issues and affirmative defenses would predominate should this case go to trial.
23 (Genish Decl., ¶ 39; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v.*
24 *U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551
25 (2011). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize
26 that there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 30; *see also,*
27 *Findings of the Study of California Class Action Litigation*, 2000-2006, available at
28 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class

1 actions were certified either as part of a settlement or as part of a contested certification motion)).

2 For example, Plaintiff's meal period claims, which were based on Defendant's alleged failure to
3 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Genish Decl., ¶
4 40; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiff's theory of liability for meal period violations was
5 based on allegations that Defendant had failed to implement its policies and that its practices failed to
6 allow Class Members to take meal breaks in the manner required under California law. (Genish Decl., ¶
7 40; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of
8 a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")).
9 In contrast, Defendant contended that its practices at all times during the Class Period were lawful.
10 (Genish Decl., ¶ 40). Defendant further argued that the rate of purported meal period violations reflected
11 in the data would require individualized inquiry and that such inquiry would prohibit a class from being
12 certified. (Ibid). Indeed, the records showed that Defendant had paid meal period premiums for 49.3%
13 of the recorded meal break violations. (Ibid). Class Counsel also had to consider the risk that the Court
14 would find validity in an individualized proof defense to certification of Plaintiff's meal period claim.
15 (Ibid).

16 Additionally, a large portion of Defendant's overall liability lies in Plaintiff's rest period
17 allegations. (*Id.*, ¶ 41). Plaintiff's damages analysis on this claim was based on an alleged 60% violation
18 rate and on the argument that Defendant's practices failed to provide employees with timely, full, and
19 uninterrupted rest periods. (Ibid). As with the meal period allegations, Defendant contended that it had
20 a lawful written rest period policy, provided compliant rest breaks and relieved Class Members of all
21 duties as required under California law. (Ibid). Additionally, this claim was even more uncertain given
22 the difficulties associated with proving the alleged rest period violations, as Defendant was not required
23 to record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
24 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages with
25 requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

26 Plaintiff also faced challenges certifying and proving liability for his minimum wage and overtime
27 claims. (*Id.*, ¶ 42). These claims were largely based on unrecorded, off-the-clock work performed by
28 the Class Members both before and after their shifts and during purported meal and rest periods. (Ibid).

1 However, the individualized nature of why this work was performed and the individualized nature of
2 damages presented substantial concerns regarding the manageability of the case and the risk the Court
3 could find these issues prevented certification, and the estimated damages for this claim were based on
4 an assumption that all class members worked off the clock for at least one hour per week. (Ibid).

5 There are also substantial risks associated with Plaintiff's waiting time penalties and wage
6 statement claims. (*Id.*, ¶ 43). First, these claims were derivative of Plaintiff's claims for unpaid meal
7 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
8 and if certification was denied on those underlying claims, these derivative claims for penalties would
9 also likely fail. (Ibid). Further, even if Plaintiff prevailed on his underlying claims, he would still be
10 required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
11 violations. (Genish Decl., ¶ 43; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
12 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
13 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
14 such claims have an element of discretion attached to them rather than a pure calculation of damages after
15 liability is proven. (Genish Decl. ¶ 43; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
16 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
17 comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Genish
18 Decl., ¶ 43).

19 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
20 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
21 proposition. (*Id.*, ¶ 44). In order to prove liability and damages, Class Counsel will need to request and
22 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,
23 and obtain their declarations at great expense. (Ibid). Obtaining the cooperation of current employees
24 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
25 employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their
26 employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals
27 would substantially delay any recovery by the Class. (Ibid).

28 ///

1 Therefore, taking into account how each of the above risks potentially effected Plaintiff's ability
2 to obtain class certification, thereafter prove the underlying violations, and the cost and delay in
3 recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability by
4 75% to \$4,316,504. (*Id.*, ¶ 45). The merits-based risk factors further reduced Defendant's estimated
5 liability by an additional 50%. (*Ibid.*). This resulted in an adjusted estimated liability of \$2,158,252. In
6 light thereof, the settlement amount of \$1,075,000.00 is a significant settlement. (*Ibid.*).

7 Class Counsel also contemplated the risks of proceeding with the PAGA action and potential
8 liability Defendant could face from this claim as part of the global resolution. (*Id.*, ¶ 46). Existing case
9 law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage claims.
10 (Genish Decl., ¶ 46; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal.
11 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of
12 Plaintiff's other claims fail as a matter of law, so does her PAGA claim"). Moreover, although California
13 case law clearly states that PAGA actions need not satisfy class action requirements, Class Counsel
14 remained mindful of the fact that some courts have nevertheless held that PAGA claims must meet a
15 threshold "manageability" requirement. (Genish Decl., ¶ 46; See, e.g., *Wesson v. Staples the Office*
16 *Superstore, LLC*, 68 Cal.App.5th 746 (2021)). Class Counsel also anticipated that even if successful on
17 the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour
18 violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would
19 argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in
20 penalties. (Genish Decl., ¶ 46).¹ Class Counsel also anticipated Defendant would argue that it made a
21 good faith attempt to comply with its legal obligations and that the violations per pay period were low,
22 warranting an additional reduction in civil penalties. (*Ibid.*). Finally, Class Counsel was also mindful of
23

24 ¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory
25 and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis*
26 *Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the
27 PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
28 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez*
v. McDonalds Restaurants of California, Inc., 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing
PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018)
(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with
obligations and minimal violations).

1 the fact that PAGA is fundamentally not intended to be compensatory in nature, but is instead intended
2 to facilitate enforcement of California’s labor laws by financing state activities and educating and
3 deterring non-compliance. (Ibid).

4 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded that
5 it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement,
6 and to allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount
7 towards the PAGA claim, which represents approximately 4.65% of the Gross Settlement Amount. (*Id.*,
8 ¶ 47). This percentage of the settlement is well within the range of wage and hour settlements regularly
9 approved in both state and federal court for cases that include both a class and PAGA action. (Ibid).
10 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and,
11 indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as
12 reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not
13 only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
14 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
15 compliance by the employer. (Ibid).

16 The Settlement is in the best interest of the Class Members, the PAGA Employees, and the State
17 of California and is within the accepted range of recoveries for this type of litigation given the inherent
18 risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
19 litigation. (*Id.*, ¶ 48).

20 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

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

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

3 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
4 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d 862,
5 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class is
6 defined as “all current and former non-exempt employees of Defendant who worked within the State of
7 California during the Class Period.” (Genish Decl., ¶ 24; Settlement Agreement, ¶ 6.b). This provides a
8 clear and definite scope for the proposed class.

9 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
10 requirement. Courts have certified classes with as few as ten or twenty-eight class members. *Rose v.*
11 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
12 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated Class size of eight hundred
13 and ninety-three (893) individuals (as of November 28, 2023) meets the numerosity requirement.

14 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
15 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
16 (1967). The existence of an ascertainable class in this case can be established through Defendant’s payroll
17 records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the
18 Court to determine the parameters of the Class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d
19 605, 617 (1987).

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

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

25 The commonality criterion requires the existence of common question of law or fact and is
26 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.
27 What is required is that a common question of fact or law exists which predominates over issues unique
28 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising

1 from employment—is not a bar to class certification as long as they do not render class litigation
2 unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois,*
3 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

4 Here, Plaintiff’s claims present common issues of law and fact that predominate and warrant class
5 certification. Plaintiff alleges that Defendant denied compliant meal and rest periods to employees,
6 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
7 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
8 overtime wages, and other related claims. Plaintiff alleges that Defendant’s policies and practices were
9 uniform as to all Class Members. Thus, class treatment is appropriate.

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

17 Here, Plaintiff alleges that his claims are similar to that of the other Class Members and that
18 Plaintiff’s claims arise out of the same alleged course of conduct giving rise to the claims of the other
19 Class Members. Because Plaintiff’s claims are based upon the same alleged conduct and business
20 practices as those of Class Members, the typicality requirement has been satisfied.

21 Finally, the question of adequacy of representation “depends on whether the plaintiff’s attorney
22 qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to the interests of
23 the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations are
24 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
25 action litigation. (Genish Decl., ¶¶ 1-8). Plaintiff will vigorously, adequately, and fairly represent the
26 interests of the Class. Plaintiff has, at all times, throughout the course of the litigation considered the
27 interests of the Class and understood that he must take steps to adequately represent the Class and their
28 interests. (BirdiDecl., ¶ 10). Because Plaintiff’s claims are typical of other Class Members and are not

1 based on unique circumstances, there is no antagonism between the interests of Plaintiff and the Class.

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

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

11 **VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

12 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
13 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz*
14 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of
15 class action settlement agreements containing enhancements for the class representative, which are
16 necessary to provide incentive to represent the class and are appropriate given the benefit the class
17 representatives help to bring about for the class. *See In re Online DVD Rental*, 779 F.3d 934, 947-948
18 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
19 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
20 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”).

21 Plaintiff initiated this litigation on behalf of his former co-workers who will now be entitled to
22 receive payment from the Settlement. Plaintiff invested substantial time and effort into litigation,
23 including his own research, reviewing documents, and extensive discussions with Class Counsel. (Birdi
24 Decl., ¶¶ 3-5). Further, the requested amount for Plaintiff is also reasonable given the average award and
25 the benefit gained by other Class Members. For these reasons, Plaintiff requests that an Enhancement
26 Payment of Seven Thousand Five Dollars and Zero Cents (\$7,500.00) to Plaintiff be preliminarily
27 approved by the Court. (Genish Decl., ¶ 49; Birdi Decl., ¶ 12).

28 ///

1 **VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

2 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will
3 “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*, 82
4 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent to fees
5 paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47. In cases
6 where class members present claims against a common fund and the defendant agrees to a percentage of
7 the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

8 Here, the requested attorneys’ fees of one-third (1/3) the Gross Settlement Amount (i.e.,
9 \$358,333.33 if the Gross Settlement Amount is \$1,075,000.00) is disclosed to Class Members in the
10 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is
11 common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will
12 elaborate on the nature of the legal services provided and will also support Class Counsel’s request for
13 the reimbursement of litigation costs and expenses not to exceed Thirty-Five Thousand Dollars and Zero
14 Cents (\$35,000.00). (Genish Decl., ¶¶ 50 & 52). The Attorneys’ Fees and Costs that are not ultimately
15 approved by the Court shall instead be included in the Net Settlement Amount to be distributed to
16 Settlement Class Members. (Settlement Agreement, ¶ 9).

17 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
18 **MEETS DUE PROCESS REQUIREMENTS**

19 The Parties have jointly drafted the Class Notice, which will be mailed to the Class Members.
20 (*Id.*, Exh. A). The Class Notice will include information regarding the nature of the Action, a summary
21 of the terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
22 Class Settlement and to dispute Workweeks and/or PAGA Workweeks, and the date of the Final Approval
23 Hearing. (*Ibid.*). The Class Notice will list each Class Member’s total Workweeks and their estimated
24 Individual Settlement Share and each PAGA Employee’s total PAGA Workweeks and their estimated
25 Individual PAGA Payment. (*Ibid.*).

26 Within twenty-one (21) calendar days after entry of the preliminary approval order, Defendant
27 will provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement
28 Administrator containing the following information for each Class Member: full name; last known

1 mailing address; Social Security number; number of Workweeks; and number of PAGA Workweeks (if
2 applicable) (collectively referred to as the “Class List”). (*Id.*, ¶¶ 6.d & 23). Within seven (7) calendar
3 days after receiving the Class List, the Settlement Administrator will perform a search based on the
4 National Change of Address Database or other similar services available, such as provided by Experian,
5 for information to update and correct for any known or identifiable address changes, and will mail a Class
6 Notice to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses
7 identified by the Settlement Administrator. (*Id.*, ¶ 24.a). The Parties have agreed to use CPT Group,
8 Inc. as the Settlement Administrator. (Genish Decl., ¶ 53; Settlement Agreement, ¶ 6.kk).

9 In determining whether to approve a settlement of a class action, a trial court has virtually
10 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
11 by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
12 (2010). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
13 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 54). The original source of the
14 mailing addresses is from Class Members, who provided the information to Defendant. (*Ibid*).

15 Class Members will have forty-five (45) calendar days after the initial mailing of the Class Notice
16 by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
17 Workweeks Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.jj).

18 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
19 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
20 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.
21 (*Id.*, ¶ 24.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt
22 to determine a correct address using a skip-trace or other search, using the name, address, and/or Social
23 Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.
24 (*Ibid*). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that
25 Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶
26 6.jj).

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28 ///

1 Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA
2 Workweeks to which they have been credited, as reflected in their respective Class Notices, by submitting
3 a timely and valid letter (“Workweeks Dispute”) to the Settlement Administrator, by mail, on or before
4 the Response Deadline. (*Id.*, ¶¶ 6.oo and 25). A Workweeks Dispute must: (a) contain the case name
5 and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone
6 number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly state that
7 the Class Member disputes the number of Workweeks and/or PAGA Workweeks credited to that Class
8 Member and what the Class Member contends is the correct number; and (f) be returned by mail to the
9 Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*,
10 ¶ 6.oo).

11 Any Class Member wishing to be excluded from the Class Settlement must submit a timely and
12 valid letter (“Request for Exclusion”) to the Settlement Administrator, by mail, on or before the Response
13 Deadline. (*Id.*, ¶¶ 6.ii & 26). A Request for Exclusion must: (a) contain the case name and number of
14 the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four
15 (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member does not
16 wish to be included in the Class Settlement; and (3) be returned by mail to the Settlement Administrator
17 at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 6.ii). Notwithstanding
18 the above, the LWDA with respect to all PAGA Employees and the State of California with respect to all
19 PAGA Employees will release the Released PAGA Claims and all PAGA Employees will be issued their
20 Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id.*, ¶ 26).

21 To object to the Class Settlement, Settlement Class Members must submit a timely and complete
22 written objection (“Notice of Objection”) to the Settlement Administrator, by mail, on or before the
23 Response Deadline. (*Id.*, ¶¶ 6.w & 27). A Notice of Objection must: (a) contain the case name and
24 number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and the
25 last four (4) digits of the objector’s Social Security number; (c) contain a written statement of all grounds
26 for the objection accompanied by any legal support for such objection; (d) contain copies of any papers,
27 briefs, or other documents upon which the objection is based; and (4) be returned by mail to the Settlement
28 Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, 6.v).

1 Settlement Class Members, individually or through counsel, may also present their objection orally at the
2 Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. (*Id.*, ¶ 27).

3 **X. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
5 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

6 Respectfully submitted,

7 Dated: February 20, 2024

BLACKSTONE LAW, APC

8
9 By:


Jonathan M. Genish
Attorneys for Plaintiff Bobby Birdi