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10 on behalf of herself, all others similarly situated,
11 and on behalf of the general public.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

15 BRANDY FIRMAN, on behalf of herself, all
16 others similarly situated, and on behalf of the
17 general public,

18
19 Plaintiffs,

20 v.

21 POWER SECURITY GROUP, INC.; SID
22 HASHEMI; and DOES 1 through 100,

23
24 Defendant.

Case No.: CIVSB2135245

[Consolidated with Case No. CIVSB2204887]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: February 23, 2024

Time: 8:30 a.m.

Dept.: S26

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1 **I. INTRODUCTION**

2 Plaintiff Brandy Firman (“Plaintiff”), on behalf of herself and the approximately 105-member
3 putative class, respectfully request that this Court preliminarily approve the Joint Stipulation and
4 Settlement Agreement¹ (“Settlement Agreement”) entered into between Plaintiff and Defendants
5 Power Security Group, Inc. and Sid Hashemi (“Defendants”) (Plaintiff and Defendants are collectively
6 referred to as the “Parties”). The Parties’ Settlement Agreement seeks to resolve claims raised against
7 Defendants in this matter in exchange for a non-reversionary \$150,000 Gross Settlement Amount
8 (“GSA”). The proposed class is comprised of hourly, non-exempt security patrol officer, security
9 vehicle patrol officers, security guards, private security guards, dispatchers, field officers, flex officers,
10 guards, or similar job designations and titles, and all other similarly situated non-exempt, hourly
11 employees of Defendants in California during the Class Period (“Class Members”). The Class Period
12 is the time period beginning on from December 29, 2017 through September 20, 2023.

13 It is requested that the Court grant preliminary approval, as, when analyzing the strengths and
14 vulnerabilities of the class claims along-side Defendants’ potential liability exposure, this proposed
15 settlement of \$150,000 – which is estimated to pay class members an average settlement share of
16 approximately \$576.19² – is well within the range of reasonableness. Moreover, the proposed
17 Agreement satisfies all of the criteria for preliminary approval under Rule 3.769 of the California
18 Rules of Court.

19 As the following sections show, Class Counsel are convinced that the proposed settlement is in
20 the best interests of the Class based on the negotiations and a detailed knowledge of the issues present
21 in this action. The length and risks of trial and perils of litigation that affect the value of the claims
22 were all carefully weighed. In addition, the defenses asserted by Defendants, the uncertainty of class
23 certification, the difficulties of complex litigation, the lengthy process of establishing specific damages
24 and various possible delays and appeals, were also carefully considered by Class Counsel in arriving
25 at the proposed settlement, including the very real possibility that due to Defendants’ financial
26 condition, it would be financially insolvent before a judgment could be collected on. The Settlement
27

28 ¹ The Settlement Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as
Exhibit 1.

² \$60,500 NSA / 105 class members = \$576.19 average payout per Class Member.

1 Agreement was the product of an all-day mediation with well-regarded and experienced mediator Jeff
2 Ross and was the product of non-collusive, arm's-length negotiations by informed counsel and parties.
3 The settlement is fair, reasonable, and adequate to all. Accordingly, Plaintiff seeks: (1) preliminary
4 approval of the terms of the Settlement Agreement; (2) provisional certification of the Class; (3)
5 appointment of Plaintiff as Class Representative; (4) appointment of Mara Law Firm, PC as Class
6 Counsel; (5) approval of the Parties' proposed notice of class action settlement³ (referred to herein as
7 the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) set a
8 hearing date for final approval.

9 II. FACTUAL/PROCEDURAL BACKGROUND

10 Defendants provides security services for its customers in the State of California. In order to
11 carry out its business, Defendants employs hourly non-exempt security guards, like Plaintiff. Mara
12 Dec. ¶ 9.

13 On December 28, 2021, Plaintiff sent notice to the LWDA of his intent to pursue various wage
14 and hour claims against Defendants on behalf of similarly situated aggrieved employees. Shortly
15 thereafter, Plaintiff filed a putative class action complaint on December 29, 2021, against Defendants
16 in the San Bernardino County Superior Court, Case No. CIVSB2135245, alleging causes of action for:
17 (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to
18 Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure Authorize and
19 Permit Recovery Periods; (6) Knowing and Intentional Failure to Comply with Itemized Employee
20 Wage Statement Provisions; (7) Failure to Pay All Wages Due at the Time of Termination of
21 Employment; (8) Irregular Pay Periods; (9) Failure to Adopt a Compliant Sick Pay/Paid Time Off
22 Policy; (10) Failure to Reimburse Business Expenses; and (11) Violation of Unfair Competition Law.
23 Plaintiff also filed a separate action alleging identical violations of the California Labor Code and
24 seeking civil penalties under the PAGA on March 8, 2022, against Defendants in the San Bernardino
25 County Superior Court, Case No. CIVSB2204887. The Parties later agreed to consolidate both cases,
26 with CIVSB2135245 designated as the lead case. Mara Dec. ¶ 10.

27 Defendants deny the allegations of the action in its entirety, deny any liability or wrongdoing
28

³ The Class Notice is attached to the Settlement Agreement as **Exhibit A**.

1 of any kind associated with the claims alleged in this action, and further deny that, for any purpose
2 other than settling this action, this matter is appropriate for class treatment. Defendants further contend
3 that they have complied with all applicable California laws, the California Labor Code, the applicable
4 California Wage Order(s), and the Unfair Competition Law. Defendants finally contend that, if this
5 matter were to be litigated further, they would have strong defenses to oppose class certification and
6 succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶ 11.

7 **III. LITIGATION HISTORY/PARTIES CONTENTIONS**

8 **a. Discovery and Investigation**

9 Through discovery, Plaintiffs sought numerous documents and substantial amounts of data that
10 were needed to evaluate the case. These documents included requests for time and wage records for
11 the Class, employee handbooks, policies, and practices in place during the class period, as well as data
12 surrounding the number of current and former employees. Mara Dec. ¶ 12.

13 This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
14 production of hundreds of documents, including Defendant's employee handbooks, policies, and
15 practices, and a sampling of wage and time records for Plaintiff and Class Members. Using the time
16 and wage records for the Class provided and the data surrounding the number of current and former
17 employees, Plaintiff was able to establish a potential exposure model in preparation for mediation.
18 Mara Dec. ¶ 13.

19 **b. The Parties' Staunchly Conflicting Positions**

20 **i. Meal and Rest Periods**

21 Based upon the discovery conducted, Plaintiff contends – and Defendants deny – that
22 Defendants fail to provide Class Members with lawful meal and rest periods. The California Supreme
23 Court succinctly described the mandate to provide meal periods: "Employers must afford employees
24 uninterrupted half-hour periods in which they are relieved of any duty or employer control and are
25 free to come and go as they please." *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
26 1037 ("*Brinker*"). In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 ("*Augustus*"),
27 the California Supreme Court ruled that these standards applicable to providing meal periods were
28 equally applicable in the context for the mandate of 10 minute rest periods. Failure to provide a lawful

1 meal or rest period shall result in the employer paying “the employee one additional hour of pay at the
2 employee’s regular rate of compensation for each workday that the meal or rest period is not
3 provided.” Cal. Lab. Code § 226.7(c).

4 Plaintiff contends that Defendants fail to permit employees to leave the premises for meal and
5 rest periods and use the time effectively for his or her own purposes free from employer control.
6 Defendant’s handbook contains a policy that threatens to terminate employees who leave the job site
7 for any reason other than an emergency. Class Members are thereby – as a matter of policy and practice
8 – prevented from using all their break time free of employer control for off-premises pursuits. For this
9 reason, Defendants do not relinquish all control over employees during their meal and rest periods in
10 violation of California law. Mara Dec. ¶ 14.

11 Defendants dispute these claims and contend that Class Members are all provided compliant
12 meal and rest periods, as Plaintiff is merely pulling one line from the handbook and applying it
13 completely out of context. First, Defendants point out that its written meal and rest periods policies
14 in its handbook are indisputably facially compliant in that they not only relieve Class Members of all
15 work duties and responsibilities during meal and rest periods, but they also explicitly state that they
16 are permitted to leave the premises during meal and rest periods. Second, Defendants claims it has
17 spoken to numerous Class Members who say they were able to leave the work premises during meal
18 and rest periods, which both refutes Plaintiff’s claim and creates individualized issues that would
19 predominate and any trial, rendering it unmanageable. Based on the foregoing, Defendants contend
20 that Plaintiff’s meal and rest period claims cannot be certified and will not succeed on the merits. Mara
21 Dec. ¶ 15.

22 **ii. Unpaid Wages**

23 Plaintiff further contends Defendants fail to pay all wages owed to Class Members. Employees
24 must be paid for all “hours worked,” as that phrase is defined in the Wage Orders and interpreted by
25 California courts. Hours worked is defined as “the time during which an employee is subject to the
26 control of an employer, and includes all the time the employee is suffered or permitted to work,
27 whether or not required to do so.” Wage Order 1-2001, Subd. 2(K); *see also Mendiola v. CPS Security*
28 *Solutions, Inc.*, 60 Cal. 4th 833 (2015).

1 Under this standard, “it is only necessary that the worker be subject to the control of the
2 employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575,
3 584 (2000). The *Morillion* Court reasoned that an employee is under the employer’s control and
4 entitled to compensation when the employer “‘directs, commands or restrains’ an employee.”
5 *Morillion*, 22 Cal. 4th at 583 (quoting *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal. App. 4th 968, 975
6 (1995)). The California Supreme Court further found that “[a]n employer that requires its employees
7 to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the
8 obligation to compensate the employee for that time by invoking the de minimis doctrine.” *Troester*
9 *v. Starbucks Corp.*, 5 Cal. 5th 829, 847 (2018). Off-the-clock claims are governed by a known or
10 should have known standard. See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
11 1051 (“liability is contingent on proof [the employer] knew or should have known off-the-clock work
12 was occurring”) (citing *Morillion*, 22 Cal. 4th at 585).

13 Here, Plaintiff contends that based on Defendants’ unlawful policies that prevent Class
14 Members from leaving the work premises during meal periods, Class Members remain under
15 Defendants control while clocked out for a meal period. Plaintiff asserts that this unpaid time is
16 compensable hours worked. Therefore, Plaintiff contends that employees are owed wages for the time
17 they spend on unpaid meal periods. Mara Dec. ¶ 16.

18 Again, Defendants contend that the policy on which Plaintiff relies clearly does not apply during
19 meal periods, as Defendants’ policies explicitly tell employees that their meal periods must be duty-
20 free and are told that they are able to leave the work premises. Defendants argue that Plaintiff would
21 have to ask each employee which policy they thought applied, what they thought the policy meant,
22 and whether they felt that they had any employer controls placed on them during meal periods.
23 Because each employee would have to testify as to their understanding of the policy, individual issues
24 would predominate and any trial would unmanageable. Defendants also contend that they would easily
25 be able to obtain declarations from employees that it would present to the Court at the summary
26 judgment and/or trial phase which refute Plaintiff’s position and would evidence that employees were
27 free to come and go as they please during meal periods. Mara Dec. ¶ 17.

1 **iii. Reimbursement**

2 Plaintiff further contends that Defendants fail to reimburse Class Members for business
3 expenses. Under Labor Code § 2802, Plaintiff argues that Defendants are required to reimburse
4 Plaintiff and Class Members for a portion of their personal cell phone bills and the costs of laundering
5 their uniforms. Labor Code § 2802(a) reads:

6 An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by
7 the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
8 the directions of the employer, even though unlawful, unless the employee, at the time of obeying the
9 directions, believed them to be unlawful.

10 Plaintiff contends that the primary method of communication Defendants use to contact Plaintiff and
11 Class Members throughout the day is their personal cell phones, and that Defendants are liable for a
12 reasonable percentage of their cell phone bills under § 2802. Mara Dec. ¶ 18.

13 Defendants contend that they never have required Plaintiff or other Class Members to use their
14 personal cell phone for business purposes. Defendants further contend if Class Members decide to use
15 their personal cell phones for business communications, that it was solely that Class Members' choice,
16 and not the result of any purported mandate by Defendants. Mara Dec. ¶ 19.

17 As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiff's
18 claims.

19 **c. The Parties Agreed to Attend Mediation**

20 The Parties agreed to attend mediation with mediator Jeff Ross on September 20, 2023. After
21 a full day of mediation, the Parties were able to reach a classwide settlement. Since then, the Parties
22 have met and conferred regarding all the terms of the settlement and finalized their agreement in the
23 Parties' Settlement Agreement. The Parties seek preliminary approval of the Settlement Agreement in
24 the instant motion. Mara Dec. ¶ 20; **Exhibit 1**.

25 **d. The Terms of the Proposed Settlement**

26 Under the terms of the proposed settlement, Defendants will create a settlement fund of
27 \$150,000.

28 **i. Deductions From the Settlement**

 The Parties have agreed (subject to and contingent upon the Court's approval) that this action
be settled and compromised for the non-reversionary total sum of \$150,000, which includes, subject

1 to Court approval: (a) attorneys' fees of up to \$50,000 (one-third of the GSA) to compensate Class
2 Counsel for work already performed and all work remaining to be performed in documenting the
3 settlement, administrating the settlement, and securing Court approval; (b) litigation expenses
4 estimated not to exceed, \$20,000;⁴ (c) an enhancement payment to the named class representative,
5 Brandy Firman, in a sum not to exceed \$7,500 in consideration for agreeing to a general release of her
6 claims against Defendants which is broader than that of other class members, and in recognition of
7 their efforts in prosecuting their actions; (d) claims administration fees and expenses to Apex Class
8 Action LLC (hereinafter "Apex"), estimated not to exceed approximately \$10,000;⁵ and (e) PAGA
9 payment of \$2,000 allocated to Plaintiff's PAGA claims.

10 **ii. Calculation of the Settlement Payments to Participating Class Members**

11 After all Court-approved deductions from the GSA, it is estimated that \$60,500 ("Net
12 Settlement Amount" or "NSA"), less all applicable employee payroll taxes⁶, will be distributed to each
13 Participating Class Member.⁷ Subject to the terms and conditions of the settlement, the Settlement
14 Administrator will calculate and issue Individual Class Settlement Shares based on the following
15 formula:

16 Each Participating Class Member will receive a proportionate share of the Net
17 Settlement Amount that is equal to (i) the number of weeks he or she worked for
18 Defendants, based on the Class Data provided by Defendants, divided by (ii) the total
19 number of weeks worked by all Participating Class Members based on the same Class
20 Data, which is then multiplied by the Net Settlement Amount. One day worked in a
21 given week will be credited as a work week for purposes of this calculation. Therefore,
the value of each Class Member's Individual Settlement Share ties directly to the
amount of weeks that he or she worked. **Exhibit 1** attached to the Mara Dec. at Section
III (56)(A)(i).

22 _____
23 ⁴ These will be tabulated and presented to the Court at final approval. Plaintiffs will only seek the
24 amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed
\$20,000, Plaintiffs will only seek reimbursement of costs up to \$20,000.

25 ⁵ Apex will present to the Court a declaration in conjunction with the final approval motion outlining
26 the costs of the settlement administration process. If the settlement administration costs are lower than
the amount allocated in the Settlement Agreement, the difference will be added to the Net Settlement
Amount for distribution to Participating Class Members.

27 ⁶ The employer's share of payroll taxes due on the portion of the Individual Settlement Payments that
28 is allocated to wages shall be paid by Defendant separately and in addition to the GSA. **Exhibit 1**
attached to the Mara Dec. at Section I (19).

⁷ Participating Class Members are Class Members who do not submit a valid and timely request to
exclude themselves from this Settlement. **Exhibit 1** attached to the Mara Dec. at Section I (34).

1 Furthermore, the Settlement allocates \$2,000 in consideration for the settlement of Plaintiff's
2 PAGA claims, which is to be distributed separately from the NSA. Settlement Class Members who
3 performed work for Defendants from December 28, 2020 through September 20, 2023 ("PAGA
4 Period") are also deemed "Aggrieved Employees" and able to recover their share of the civil penalties
5 under the settlement. 75% of this \$2,000, or \$1,500, will be paid to the LWDA, while the remaining
6 25%, or \$500, will be distributed to the Aggrieved Employees. The Settlement Administrator will
7 calculate and issue Individual PAGA Settlement Shares based on workweeks, just as with the class
8 payments, but only for the PAGA Period of December 28, 2020 through September 20, 2023. **Exhibit**
9 **1** attached to the Mara Dec. at Section III (57)(A)(i).

10 The precise number of compensable weeks worked per class member will not be known until
11 the administrator tabulates them, following preliminary approval. Under no circumstances will any
12 portion of the \$150,000 settlement revert to Defendants and one hundred percent (100%) of the NSA
13 is available for Class Members to claim.

14 The Individual Class Settlement Shares will be divided into a "wage portion" to compensate
15 Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate
16 Participating Class Members for alleged interest and penalties. Participating Class Members'
17 individual settlement shares will be apportioned as follows: one-third wages, one-third interest, and
18 one-third penalties. The Individual PAGA Settlement Shares will be apportioned as one-hundred
19 percent (100%) penalties.

20 **iii. Notice to the Class**

21 Upon entry of the order of the Court granting preliminary approval of this Agreement,
22 Defendants shall provide the Settlement Administrator with a list in Excel spreadsheet format
23 containing the name and last known address, telephone number, and social security number of each
24 Class Member within thirty (30) days for purposes of mailing the Notice of Class Action Settlement
25 to the Settlement Class members. Upon receipt of the class data, the Settlement Administrator will
26 perform a search based on the National Change of Address Database to update and correct any known
27 or identifiable address changes. Within ten (10) business days of receipt of the class data, the
28 Settlement Administrator shall mail copies of the Notice of Class Action Settlement to all Class

Members via regular First-Class U.S. Mail. Class Members shall have sixty (60) days after the Class Notices are mailed to respond by submitting a challenge to the number of workweeks attributed to them, submitting an objection, or requesting to be excluded from the Settlement Agreement.

iv. Distribution of Funds

No later than thirty (30) days after the Effective Final Settlement Date⁸, Defendants shall provide the GSA to the Settlement Administrator to fund the Settlement and the employer's share of payroll taxes due on the portion of the Individual Settlement Payments that is allocated to wages. Not later than ten (10) business days after receiving the funds from Defendant, the Settlement Administrator shall disburse: (1) the Individual Settlement Shares to each Class Member and Aggrieved Employee; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court.

Class Members must cash or deposit their Individual Settlement Payment checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within one hundred and eighty (180) calendar days after mailing, the Settlement Administrator will transmit the funds to the State of California Controller's Office under the Unclaimed Property Statutes in the name of the Class Member.

v. Release of Claims

As of the Effective Final Settlement Date, the Class Representative and the Class Members will release the Released Class Claims:

Any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that were alleged in the Class Action. **Exhibit 1** attached to the Mara Dec. at Section I (37).

As of the Effective Final Settlement Date, the Class Representative and the Aggrieved Employees will release the Released PAGA Claims:

⁸ "Effective Final Settlement Date" of the Settlement means when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.

1 Any and all claims for civil penalties under the California Labor Code and the Private
2 Attorneys General Act predicated upon the Labor Code violations asserted, as well as
3 any potential penalties, interest or attorneys' fees associated with those violations under
4 California law, to the extent such claims are predicated on claims alleged in the PAGA
5 Action and Plaintiff's notice to the LWDA. **Exhibit 1** attached to the Mara Dec. at
6 Section I (38).

7 In addition, Plaintiff agreed to a general release of her claims against Defendants. *See Exhibit*
8 **1** attached to the Mara Dec. at Section III (63). At final approval, Class Counsel will seek approval of
9 this Enhancement Payment to the named Plaintiff in the sum of \$7,500. As will be detailed at final
10 approval, the requested enhancement is reasonable in light of the broad general release Plaintiff is
11 giving to Defendants in exchange for the \$7,500 payment.

12 In addition, this payment is further supported by the fact that plaintiffs are often subjected to
13 the stigma associated with bringing these types of lawsuits. In this age of technology, employers
14 engage in thorough background checks on their employees. As these case filings are all public record,
15 a simple "Google" search is all it would take for Plaintiff's name to appear associated with these
16 pending lawsuits against their former employers. This could be a significant factor in any employer's
17 decision to hire Plaintiff in the future.

18 Plaintiff took it upon herself to delay recovery of her individual claims by proceeding with
19 class and representative actions, with a full understanding of the risks involved. Plaintiff was fully
20 aware that class action and representative litigation would cause Defendants to incur hefty costs
21 throughout the litigation, and that if she was unsuccessful in these cases, may be liable for some, or
22 even all, of these costs. Despite this knowledge, Plaintiff pushed forward with the litigation; she was
23 always readily available by phone and fully participated every step of the way throughout the entirety
24 of this process.

25 Courts routinely approve service payments, or incentive awards, to compensate named
26 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
27 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*
28 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the \$7,500
payment to the named Class Representative is fair, appropriate and justified as part of the overall

1 settlement.

2 IV. ARGUMENT

3 a. Class Action Settlements are Subject to Court Review and Approval Under the 4 California Rules of Court

5 Rule 3.769 requires court approval for class action settlements.⁹ “Before final approval, the
6 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
7 Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class
8 settlements:

9 (a) A settlement or compromise of an entire class action, or a cause of action in a
10 class action, or as to a party, requires the approval of the court after hearing.

11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement agreement
13 and proposed notice to class members must be filed with the motion, and the
14 proposed order must be lodged with the motion.

15 Courts act within their discretion in approving settlements that are fair, not collusive, and take into
16 account “all the normal perils of litigation as well as the additional uncertainties inherent in complex
17 class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den.
18 sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

19 b. The Settlement is Fair, Reasonable, and Adequate

20 In deciding whether to approve a proposed class action settlement under Code of Civil
21 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”
22 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is
23 **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length
24 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
25 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
26 small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with
27 the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation

28 ⁹ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23
and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the
Parties cite Federal Rule 23 and federal case law in addition to California law.

1 – bearing on the fairness of the proposed settlement are present here and the Court’s grant of
2 preliminary approval is therefore requested.

3 **i. The Settlement was Reached as a Result of Arm’s Length Negotiations**

4 The settlement was reached as a result of arm’s-length negotiations. Though cordial and
5 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in
6 nature. At the mediation and the following negotiations through the mediator, Counsel for the Parties
7 conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms
8 of the settlement are memorialized in the Settlement Agreement which is attached to the Declaration
9 of David Mara, Esq. as **Exhibit 1**.

10 **ii. The Settlement is the Result of Thorough Investigation and Discovery**

11 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
12 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
13 support the settlement. The settlement was only possible following discovery and evaluation of
14 Defendants’ policies and procedures, as well as the data produced for the putative class, which
15 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
16 This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and
17 weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979)
18 485 F. Supp. 610, 617.

19 **iii. Counsel for Both Parties are Experienced in Similar Litigation**

20 Both Plaintiff’s Counsel and Defendants’ Counsel are experienced in wage and hour
21 employment law and class actions. Plaintiff’s Counsel has significant experience in litigating unpaid
22 wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement
23 class actions. Plaintiff’s Counsel has prosecuted numerous wage and hour class action cases on behalf
24 of employees for California Labor Code violations and thus are experienced and qualified to evaluate
25 the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the
26 viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mara Law Firm, PC was class counsel in
27 *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision
28 of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience

1 instructed Plaintiff's Counsel on the risks and uncertainties of further litigation and guided their
2 determination to endorse the proposed settlement. Defendants' Counsel has experience representing
3 companies and regularly deals with wage and hour litigation matters. Accordingly, both Parties'
4 Counsel are experienced in wage and hour employment law and class actions.¹⁰

5 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

6 An understanding of the amount in controversy is an important factor into whether the
7 settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the
8 claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168
9 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
10 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for plaintiffs
11 on the merits, balanced against the amount offered in settlement." *Id.*

12 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide
13 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
14 attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
15 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
16 provided there is a record which allows "an understanding of the amount that is in controversy and the
17 realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the
18 court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the
19 court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness."
20 *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38
21 Cal.3d 488, 499-500. As the following subsections show, the Parties' investigation and discovery
22 revealed plenty of reasons to discount claims and agree to this settlement.

23 **1. The Settlement is Fair and Reasonable Based on the Strengths of
24 Plaintiff's Case and the Risks and Costs of Further Litigation**

25 The proposed settlement was only possible following significant discovery, an evaluation of
26 Defendants' relevant policies and procedures, and Plaintiff's independent investigation. This
27 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The

28 ¹⁰ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class
Notice has been provided to the class and they have had an opportunity to respond. This information
will be provided to the Court in conjunction with the final approval motion.

1 discovery conducted resulted in Plaintiff's central theories of liability, which are predicated on
2 Plaintiff's claims that Defendants failed to pay hourly employees for all time worked, failed to provide
3 meal and rest periods, and failed to reimburse them for business expenses. As explained above,
4 Defendants maintain that the discovery produced demonstrates that it would succeed at both class
5 certification and on the merits.

6 Although, Plaintiff believes this case is suitable for certification on the claimed bases that there
7 are company-wide policies and practices that Plaintiff contends violate California law and uniformly
8 affect the class members, Defendants' counter-arguments and affirmative defenses raise uncertainties
9 with respect to both class certification and success on the merits. As the California Supreme Court
10 ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the
11 trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with
12 respect to certification of wage and hour claims.¹¹ While remaining confident in the strengths of their
13 claims, all of these factors led Plaintiff to discount the following maximum potential damage claims.

14 **2. Exposure and the Risks for Each Claim**

15 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's
16 claims, Defendants provided Plaintiff with information and data points which Plaintiff used to
17 establish a representative damage model, as explained below. Mara Dec. ¶ 21.

18 **A. Meal and Rest Periods**

19 Plaintiff contends that Defendants have failed to provide Class Members with lawful meal and
20 rest periods. Plaintiff argues that Class Members were unable to leave the work premises during their
21 meal and rest periods. Accordingly, Defendants' *maximum* exposure under Plaintiff's meal period
22 claim is \$288,190 (Approximately 20,585 shifts over five hours x \$14.00 average hourly rate =
23 \$288,190) and Defendants' *maximum* exposure under Plaintiff's rest period claim is \$317,450
24 (Approximately 22,675 shifts over 3.5 hours x \$14.00 average hourly rate = \$317,450). Mara Dec. ¶

25 ¹¹ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class
26 claiming misclassification and ordering summary adjudication in favor of employees), *review granted*,
27 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON*
28 *Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming
misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of
certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of
certification).

22.

Plaintiff had to discount the maximum exposure of these claims to account for the viability of Defendants' counter arguments. As Defendants have pointed out, they have maintained written meal and rest period policies that explicitly permit employees to leave the premises during meal and rest periods. This, coupled with Class Member testimony that Defendant claims will definitively demonstrate that employees were free to leave the premises, and did leave the premises, during meal and rest periods, will defeat Plaintiff's claims both on the merits and at class certification. Mara Dec.

¶ 23.

B. Unpaid Wages

In addition, Plaintiff alleges that Defendants have failed to pay Class Members for all hours worked. As Defendants required Class Members remain on the premises while clocked out for meal periods, Class Members remained under Defendants' compensable control and should have been paid for this time. Accordingly, Defendants' *maximum* exposure under Plaintiffs' unpaid wages claim is \$116,214 (Approximately 16,602 shifts with unpaid meal periods x 30 minutes of unpaid time x \$14.00 average hourly rate = \$116,214). Mara Dec. ¶ 24.

Further, if Plaintiff were to prevail on her unpaid wages claim, she may also be entitled to waiting time penalties. Plaintiff calculates the potential *maximum* exposure under the waiting time penalties cause of action as \$295,680 (88 former employee Class Members during the three-year statutory period x 30 days x 8 hours x \$14.00 average hourly rate = \$295,680). Mara Dec. ¶ 25.

Additionally, if Plaintiff were to prevail on her unpaid wages claim, she may also be entitled to wage statement penalties. Plaintiffs calculate the potential *maximum* exposure under the wage statement cause of action as \$68,000 (\$4,000 maximum penalty x 17 current employee Class Members = \$68,000). Mara Dec. ¶ 26.

Plaintiff had to discount the maximum exposure of these claims to account for the viability of Defendants' counter arguments. As discussed above, Defendants contend that the policy on which Plaintiff relies clearly does not apply during meal periods, as Defendants' policies explicitly tell employees that their meal periods must be duty-free and are told that they are able to leave the work premises. Therefore, the Court would have to ask each employee which policy they thought applied,

1 what they thought the policy meant, and whether they felt that they had any employer controls placed
2 on them during meal periods. As such, individual issues would predominate and any trial would
3 unmanageable. Further, as Plaintiff's claims for waiting time and wage statement penalties are
4 derivative of his wage claims, Defendants argue that they would not be liable for these either. Should
5 the Court agree with Defendants' arguments, Plaintiff and Class Members would be entitled to no
6 recovery under these causes of action. Mara Dec. ¶ 27.

7 **C. Reimbursement**

8 Further, Plaintiff claims that Defendant has required Plaintiff and Class Members to incur
9 business expenses during their employment without receiving any reimbursement from Defendant.
10 Specifically, Plaintiff contends that Class Members are required to use their personal cell phones to
11 communicate with Defendant during the workday. If Plaintiff were to prevail on his reimbursement
12 cause of action, Class Members would be entitled to reimbursement for a reasonable percentage of
13 their costs associated with their personal cell phones. Therefore, the *maximum potential exposure*
14 under this theory of liability would be \$28,900 (Approximately 68 months during the relevant time
15 period x \$25, or 25% of a \$100 monthly phone bill x 17 Class Members employed at any given time
16 = \$28,900). Mara Dec. ¶ 28.

17 Plaintiff's reimbursement claim is also subject to risks of obtaining certification and on the
18 merits. Defendants assert that it does not have a policy or practice that requires Class Members to use
19 their personal cell phones for business purposes. Further, Defendants point out that because each Class
20 Member would have to testify as to the extent of their use of their personal cell phone and their
21 understanding of company policy surrounding these issues, class certification would be denied for lack
22 of predominance. Mara Dec. ¶ 29.

23 **D. PAGA**

24 Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
25 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
26 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

27 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
28 period for the initial violation and two hundred dollars (\$200) for each aggrieved
employee per pay period for each subsequent violation.

1 Plaintiff alleges that Defendant has four (4) core violations –failure to pay all time worked, failure to
2 provide meal periods, failure to provide rest periods, and failure to reimburse business expenses – of
3 the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA
4 violations goes back one year. As there were approximately 1,089 pay periods in the statutory period
5 at the time of mediation, Plaintiff calculated Defendants’ potential maximum exposure under PAGA
6 as follows:

$$\text{\$100} \times 4 \text{ PAGA violations} \times 1,089 \text{ pay periods} = \text{\$435,600}$$

8 Mara Dec. ¶ 30.

9 Plaintiff’s PAGA claims are subject to the same risks on the merits as Plaintiff’s non-PAGA
10 claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that “[i]n any action by an
11 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
12 may award a lesser amount than the maximum penalty amount specified by this part if, based on the
13 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
14 arbitrary, oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*
15 (“*Thurman*”) (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum
16 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
17 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112,
18 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its
19 obligations to comply with the law seriously. *Id.* Defendant maintains that if the case were to continue
20 in litigation, they would be able to show that they took their obligations to comply with the law
21 seriously. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, it is likely
22 that the Court would reduce the maximum penalty allowed.

23 In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful
24 conduct that Plaintiff bases her other claims, Plaintiff’s PAGA claims are subject to the same risks on
25 the merits as Plaintiff’s class claims. If Plaintiff is ultimately unable to prevail on any one of his class
26 claims, his recovery under the PAGA as to that violation would also fail. The likelihood of the Court
27 reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming liability
28 is proven as to each of Plaintiff’s claims – is also higher in this case where these same individuals will

1 also be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold*
2 *Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist.
3 LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
4 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§
5 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
6 PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
7 penalties are highly uncertain.”).

8 **3. The Settlement Amount of \$150,000 is Reasonable**

9 Not taking into account any of their defenses or arguments, Defendants’ total exposure if
10 Plaintiff was successful in her core claims would be approximately \$750,754 [\$288,190 (meal period
11 exposure) + \$317,450 (rest period exposure) + \$116,214 (unpaid wages exposure) + \$28,900
12 (reimbursement exposure) = \$819,793]. If Plaintiff is successful in their unpaid wage claims, she may
13 also be entitled to damages for waiting time and wage statement penalties in the amount of \$295,680
14 and \$68,000, respectively. If all of Plaintiff’s claims are successful, she may also be entitled to PAGA
15 penalties in the maximum amount of \$435,600. *Mara Dec.* ¶ 31.

16 Based upon the risks just discussed, Plaintiff had to discount the maximum potential exposure.
17 Plaintiff also had to consider that, should the Court agree with his theories and grant certification as
18 to each of the claims, she may not be awarded the full exposure at trial. Plaintiff also had to consider
19 that the Court could agree with Defendants’ arguments. The vast majority of the damages at issue
20 hinge on Plaintiff’s theory of liability regarding the ability to leave for meal and rest periods. Should
21 this claim fail, the meal period, rest period, and unpaid wages claims would all fail. Similarly, the
22 derivative claims for waiting time, wage statement, and PAGA penalties would also fail. All of these
23 factors led Plaintiff to reduce the realistic potential exposure in order to gain a definite monetary
24 recovery for the class.

25 Further, Defendants’ financial condition raises serious issues moving forward in litigation.
26 There is a substantial risk that Defendants may no longer be in business if it is forced to continue
27 paying the costs and fees to litigate this matter, let alone pay any judgement owed if Plaintiff were to
28 prevail on the merits of her claims. If this occurs, employees would not receive **any** compensation for
the wage and hour violations Plaintiff alleges against Defendants.

1 In light of the risks Plaintiff's claims faced, Plaintiff and their Counsel believe that the
2 settlement amount of \$150,000 – with an average settlement share amount estimated at \$576.19 – is a
3 reasonable and fair settlement amount. Mara Dec. ¶ 32.

4 A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
5 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
6 reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
7 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the
8 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
9 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
10 the public interest may indeed be served by a voluntary settlement in which each side gives ground in
11 the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n*
12 (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a
13 fraction of the potential recovery does not...render the settlement inadequate or unfair”).

14 **c. Provisional Class Certification Should be Granted**

15 Under California law, a class action is appropriate when the class is ascertainable and there is
16 “a well-defined community of interest in the questions of law and fact involved affecting the parties
17 to be represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil
18 Procedure § 382 for class certification follow federal law according to Rule 23 of the Federal Rule of
19 Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of
20 representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also*
21 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court
22 must certify a class for settlement purposes if a class has not already been certified, “it is well
23 established that trial courts should use different standards to determine the propriety of a settlement
24 class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used
25 for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836,
26 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

27 Plaintiff contends, and Defendants do not dispute for settlement purposes only, each of these
28 elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

1 Plaintiff seeks approval of the following Class for settlement purposes only: All hourly, non-exempt
2 security patrol officer, security vehicle patrol officers, security guards, private security guards,
3 dispatchers, field officers, flex officers, guards, or similar job designations and titles, and all other
4 similarly situated non-exempt, hourly employees of Defendants in the State of California from
5 December 29, 2017 through September 20, 2023.

6 **i. The Proposed Settlement Class is Ascertainable**

7 Plaintiff contends that the proposed Settlement Class is ascertainable because of all of the class
8 members have worked for Defendants and have been identified through Defendants' own records,
9 such as employee and payroll files. *See Rose v City of Hayward* (1981) 126 Cal.App.3d 926,932
10 (finding that "Class Members are 'ascertainable' where they may be readily identified without
11 unreasonable expense or time by reference to official records."); *Sevidal v. Target Corp.* (2010) 189
12 Cal.App.4th 905, 919 ("[c]lass members are 'ascertainable' where they may be readily identified
13 without unreasonable expense or time by reference to official [or business] records."). Thus, the
14 ascertainability requirement is met.

15 **ii. The Proposed Settlement Class is Sufficiently Numerous**

16 The numerosity requirement is met if the class is so large that joinder of all members would be
17 impracticable. *Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F. Supp. 282, *aff'd*
18 (9th Cir. 1982) 694 F.2d 531. "There is no set number required to maintain a class action, and the
19 statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the
20 court.'" *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223
21 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995)
22 44 Cal.2d 574 (upholding a class of ten members). "The numerosity requirement is more readily met
23 when a class contains employees suing their present employer . . . This is because class members may
24 be unwilling to sue their employer individually out of fear of retaliation." *Romero v. Producers Dairy*
25 *Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, "fear of
26 retaliation for individual suits against an employer is a justification for class certification in the arena
27 of employment litigation, even when it is otherwise questionable that the numerosity requirements
28 were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate

1 to induce aggrieved employees quietly to accept substandard conditions.” *Gentry v. Superior Court*
2 (2007) 42 Cal.4th 443, 460 (citation omitted), overruled on other grounds in *Iskanian v. CLS Transp.*
3 *Los Angeles, LLC* (2014) 59 Cal.4th 348.

4 Here, Defendants’ records show that the proposed Settlement Class has approximately one-
5 hundred five (105) members. Plaintiff contends that joinder of all Class Members is impracticable and,
6 therefore, a class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017,
7 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as
8 few as 28 is acceptable.). In fact, a class of ten (10) has been certified as a class action. *Id.*, citing
9 *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that
10 classes of over forty (40) individuals are numerous enough to meet the numerosity requirement. *See*
11 *Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, the Class that is
12 comprised of approximately one-hundred five (105) members is sufficient to satisfy the numerosity
13 requirement.

14 **iii. The Commonality Requirement is Met**

15 The commonality requirement is met if there are questions of law and fact common to the class.
16 *Hanlon, supra*, 150 F.3d at 1019 (“The existence of shared legal issues with divergent factual
17 predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies
18 within the class.”). “Predominance is a comparative concept, and ‘the necessity for class members to
19 individually establish eligibility and damages does not mean individual fact questions predominate.’”
20 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there
21 is a predominant common legal question regarding how an employer’s policies impact its employees.
22 *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) (“[T]he common legal
23 question remains the overall impact of Diva’s policies on its drives.”). Whether Plaintiff is likely to
24 prevail on his theory of recovery is irrelevant at the certification stage since the question is “essentially
25 a procedural one that does not ask whether an action is legally or factually meritorious.” *Linder v.*
26 *Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

27 Here, Plaintiff contends that the proposed Class Members’ claims all stem from the same
28 allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff

1 seeks the same legal remedies under state law on behalf of themselves and all Class Members. As
2 liability as to all Class Members is predicated on the same policies and practices, which Plaintiff
3 alleges violates California law, the commonality requirement has been satisfied.

4 **iv. The Typicality Requirement is Met**

5 The typicality requirement is met if the claims of the named representative are typical of those
6 of the class, though, “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020;
7 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiffs contend that their claims are typical of
8 the Class Members’ claims because they arise from the same factual basis and are based on the same
9 legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987)
10 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff
11 alleges that Defendants’ policies applied to all Class Members. Factual differences may exist between
12 Plaintiff’s and the Class Members so long as the claims arise from the same events or course of conduct
13 and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*,
14 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 [When it is alleged that the same
15 unlawful conduct was directed at or affected both the named plaintiff and the class sought to be
16 represented, the typicality requirement is usually met irrespective of varying fact patterns which
17 underlie individual claims.] As such, the typicality requirement is satisfied.

18 **v. The Adequacy Requirement is Met**

19 The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the
20 proposed Class Members and is committed to vigorously prosecuting the case on behalf of the class.
21 *Hanlon, supra*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51.
22 Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of interest with
23 the Class. She has been and continues to be committed to vigorously prosecuting this case. If any Class
24 Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of
25 interest between Plaintiff and the Class Members.

26 **vi. Notice to Class Members Complies with California Rule of Court 3.769(f)**

27 California Rule of Court 3.769(f), provides:

28 If the court has certified the action as a class action, notice of the final approval hearing
must be given to class members in the manner specified by the court. The notice must

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contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

The proposed Class Notice meets all of these requirements. The proposed Class Notice advises the class of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing. The proposed Class Notice is attached as **Exhibit A** to the Settlement Agreement.

V. CONCLUSION

Plaintiff respectfully submits that the proposed settlement is in the best interests of the class and class members, as it is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Notice of Class Action Settlement should be approved.

Respectfully Submitted,

MARA LAW FIRM, PC

Date: January 30, 2024

Signed: 
David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff