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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

(UNLIMITED JURISDICTION)

ALFREDO BETANCOURT, on behalf of
himself, all others similarly situated, and
the general public, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

L3 TECHNOLOGIES, INC.; and DOES 1
to 25, inclusive,

Defendant(s).

Case No.: 23-CIV-05704

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

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Hearing Date:	November 22, 2024
Hearing Time:	2:00 p.m.
Hearing Dept:	24, Hon. Jeffrey R. Finigan

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alfredo Betancourt (“Plaintiff”) submits this memorandum of points and
4 authorities in support of his unopposed motion for preliminary approval of the Stipulation and
5 Settlement of Class Action and PAGA Claims (the “Settlement”)¹, which provides for a Gross
6 Settlement Amount(“GSA”) of \$1,815,000 in compromise of all disputed claims on behalf of
7 all current and former non-exempt, hourly paid employees who worked for Defendant L3
8 Technologies, Inc. (“Defendant”) in California at any time during the Class Period of January
9 31, 2021 and ending on the date that the Court grants preliminary approval of the Settlement;
10 all current and former hourly, non-exempt employees who worked for Defendant’s Sylmar, CA
11 facility during the period of August 27, 2018 to December 31, 2021;and for all current and
12 former hourly non-exempt employees who worked for Defendant’s Anaheim and Gardena, CA
13 facilities during the period beginning October 5, 2019 and ending on the date that the Court
14 grants preliminary approval of the Settlement. Through this Motion, Plaintiff respectfully
15 requests for this Court to (1) provisionally certify the below-defined Class for settlement
16 purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the Settlement;
17 (3) preliminarily appoint Plaintiff as Class Representative; (4) appoint Harout Messrelian and
18 Maralle Messrelian of Messrelian Law Inc. as Class Counsel; (5) approve the proposed notice
19 procedures and related forms; and (6) schedule a final approval hearing.

20 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
21 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
22 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
23 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as
24 Class Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the
25 proposed notice procedures, and related forms, fully comport with due process and adequately
26 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to
27 allow Settlement Class members an opportunity to be heard regarding the Settlement and to

28 ¹ The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of Harout Messrelian (“HM”),
which is submitted herewith under a separate cover.

1 give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff's
2 Motion in its entirety and preliminarily approve the Settlement.

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 Defendant first employed Plaintiff on or around November 28, 2016 to work as a paint
5 finisher at the L3 facility located at 130 Constitution Drive in Menlo Park, California.
6 Plaintiff's job titles have included Industrial Paint Spec I and Industrial Paint Spec III. Plaintiff
7 was classified as an hourly, non-exempt employee and earned approximately \$33.00 per hour.
8 Plaintiff continuously worked for Defendant from the time of his hire until on or around August
9 12, 2021, when his employment with Defendant ended. HM, ¶ 4.

10 **A. Plaintiff's Claims and Procedural History**

11 On January 31, 2022 and June 3, 2024 Plaintiff notified Defendant and the California
12 Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private
13 Attorneys General Act of 2004, California Labor Code sections 2698, et seq. ("PAGA"), of
14 alleged Labor Code violations committed by Defendant. A true and correct copy of the letters
15 to the LWDA dated January 31, 2022 and June 3, 2024 are attached hereto as Exhibit 2. HM, ¶
16 5, Ex. 2.

17 On December 1, 2023, Plaintiff filed a Class Action Complaint in the San Mateo
18 Superior Court, Case No, 23-CIV-05704 against Defendant on behalf of himself and others
19 similarly situated, alleging causes of action on a class-wide basis for (1) Failure to Provide Rest
20 Breaks (Lab. Code §§ 226.7 and 1198); (2) Failure to Provide Meal Periods (Lab. Code §§
21 226.7, 512 and 1198); (3) Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197, and
22 1198); (4) Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, and 1198); (5) Failure to
23 Indemnify (Lab. Code §§ 1198 and 2802); (6) Wage Statement Penalties (Lab. Code § 226); (7)
24 Waiting Time Penalties (Lab. Code §§ 201-203); (8) Failure to Pay Wages Owed Every Pay
25 Period (Lab. Code § 204); (9) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
26 (10) Penalties Under the Private Attorneys General Act ("PAGA") (Lab. Code §§ 2698, et
27 seq.). HM, ¶ 6, Ex. 3. On January 29, 2024, Defendant filed its Answer to Plaintiff's complaint.
28 *Id.*, Ex. 4.

///

1 **B. Arms' Length Settlement Negotiations**

2 The parties met and conferred and agreed that it may be in their mutual interests to
3 discuss Plaintiff's allegations informally, rather than through litigation, and engaged in good
4 faith arms' length settlement discussions over the course of an entire year and agreed to the
5 material terms of the Settlement. In order to implement the proposed Settlement, the parties
6 agreed to the filing of a First Amended Complaint, which was filed on July 9, 2024. HM, ¶ 7,
7 Ex. 5.

8 In advance of the settlement negotiations, and before agreeing to the terms of the
9 Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendant
10 produced its employee handbook, copies of Defendant's relevant company written policies,
11 time-keeping records, and time and payroll data for a random sample of putative class members
12 specifically selected by Plaintiff's counsel. Now that the Parties have finalized the long-form
13 Settlement, Plaintiff submits it to this Court for preliminary approval. HM, ¶ 8.

14 Defendant denies any liability or wrongdoing of any kind whatsoever associated with
15 the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and
16 discharge all claims known or unknown related to those alleged in Plaintiff's lawsuit. It is the
17 desire of the parties to fully, finally, and forever compromise, and discharge all claims known
18 or unknown related to those alleged in Plaintiff's lawsuit. HM, ¶ 9.

19 **III. OVERVIEW OF SETTLEMENT**

20 **A. Settlement Class Definition**

21 The "Class" or "Class Member" means:

- 22 1. All current and former hourly, non-exempt employees who worked for
23 Defendant at any time during the period beginning January 31, 2021 and
24 ending on the date that the Court grants preliminary approval of the
25 Settlement; and
- 26 2. All current and former hourly, non-exempt employees who worked for
27 Defendant's Sylmar, CA facility at any time during the period of August
28 27, 2018 to December 31, 2021; and
3. All current and former hourly, non-exempt employees who worked for
Defendant's Anaheim and Gardena, CA facilities at any time during the
period beginning October 5, 2019 and ending on the date that the Court
grants preliminary approval of the Settlement.

Settlement, ¶¶ g, j.

1 Class Period means

- 2 1. The period beginning January 31, 2021 and ending on the date that the Court
3 grants preliminary approval of the Settlement (for all current and former
4 nonexempt employees who worked for Defendant at any time during this
5 period); and
- 6 2. the period of August 27, 2018 to December 31, 2021 (for all current and former
7 hourly, non-exempt employees who worked for Defendant's Sylmar, CA
8 facility); and
- 9 3. the period beginning October 5, 2019 and ending on the date that the Court
10 grants preliminary approval of the Settlement (for all current and former hourly
11 non-exempt employees who worked for Defendant's Anaheim and Gardena, CA
12 facilities).

13 **B. Monetary Terms**

14 In consideration for settlement of the Class Action, Defendants agree to pay a total of
15 One Million Eight Hundred Fifteen Thousand Dollars and Zero Cents (\$ 1,815,000.00) (the
16 "Gross Settlement Amount" or "GSA"). The GSA will be all-inclusive and includes: (1) all
17 Individual Settlement Payments to Class Members; (2) an Enhancement Payment to Plaintiff,
18 as class representative and private attorney general, for up to \$2,000; (3) Class Counsel's
19 Attorneys' Fees up to one third of the GSA (33 and 1/3%), which is Six Hundred Five
20 Thousand Dollars (\$605,000) and for litigation costs not to exceed Five Thousand Dollars
21 (\$5,000); (4) Settlement Administration Costs of not more than Twenty Thousand Dollars and
22 Zero Cents (\$20,000); (5) the Employer's Share of Payroll Taxes; and (6) \$200,000 for the
23 PAGA settlement amount("PAGA Payment") under California Labor Code §§ 2699 et seq.
24 (75% or \$150,000 will go to the California Labor & Workforce Development Agency ("LWDA
25 Payment") and 25% or \$50,000 will be disbursed to Aggrieved Employees, regardless of
26 whether they request to be excluded from the Settlement Class. The GSA is non-reversionary.
27 The Settlement is not a claims-made settlement. Settlement, ¶¶ t, u, y, ff, 3.06. The "Net
28 Settlement Amount" ("NSA") will equal the net amount available for payment of claims to
Class Members after deducting the above-referenced costs from the Gross Settlement Amount.
Settlement, ¶¶ bb, 3.06.

Individual Settlement Payment Calculations: The NSA will be divided between all
Participating Class Members in proportion to the number of Qualifying Workweeks for each
Class Member. To calculate the amount each Participating Class Member will receive, the Net

1 Settlement Amount will be divided by the total number of Qualifying Workweeks worked by
2 all Participating Class Members during the Class Period to determine the base dollar amount
3 per Qualifying Workweek. The Settlement Administrator shall then multiply the number of
4 Qualifying Workweeks for each Participating Class Member by the base dollar amount. In
5 addition, all Aggrieved Employees shall receive a pro rata share of the portion of the PAGA
6 Payment allocated to Aggrieved Employees based on their Qualifying Pay Periods during the
7 PAGA Period. Settlement, ¶ 3.06 (g)(h).

8 All Individual Settlement Payments will be allocated as follows: thirty (30%) allocated
9 to wages (with legally required tax withholding) for which IRS Forms W-2 will be issued; and
10 seventy percent (70%) allocated to penalties, expenses and interest for which IRS Forms 1099-
11 MISC will be issued. Individual PAGA Settlement Payments are payments for civil penalties
12 upon which no tax withholdings shall be made. Settlement, ¶ 3.06 (h).

13 Defendants shall be required to pay the GSA within forty-five (45) days after the
14 Effective Date of the Settlement.² Settlement, ¶ 3.06(a). Upon Defendant funding the GSA, the
15 Settlement Administrator will issue Individual Settlement Payments to Participating Class
16 Members and Aggrieved Employees, Settlement Administration Costs, Attorneys' Fees and
17 Costs, Enhancement Payment, and the LWDA Payment. Settlement, ¶ 3.06.

18 **C. Release of Claims**

19 Releases by Participating Class Members and Plaintiff: For the Settlement Class
20 Release Period, Plaintiff and Participating Class Members will waive and release the Released
21 Class Claims against Defendant L3 TECHNOLOGIES, INC., together with its current and
22 former owners, officers, directors, managers, employees, agents, and subsidiaries, including
23 L3Harris Maritime Power & Energy Solutions, Inc. (collectively, including Defendant, the
24 "Released Parties").

25 Settlement, ¶ 4.01.

26 ² "Effective Date" means the later of the following: (i) if there are no objections to the Settlement, then the sixty-
27 first (61st) day after service of notice of entry of the Judgment entered by the Court; (ii) if there are objections to
28 the Settlement, and if an appeal, review or writ is not sought from the Judgment, the sixty-first (61st) day after
service of notice of entry of the Judgment; or (iii) if an appeal, review or writ is sought from the Judgment, the
date upon which Settlement, ¶ q.

1 The Released Class Claims include:

2 all claims under federal, state or local law, that were asserted or could have been
3 asserted based on the facts, claims, and theories expressly pleaded in the Complaint; the
4 facts, claims or theories expressly raised in Plaintiff's notice to the LWDA dated
5 January 31, 2022, regarding Defendant; and/or any facts, claims or theories arising
6 under any applicable IWC Wage Orders, including claims for: (1) Failure to Provide
7 Rest Breaks (Lab. Code §§ 226.7 and 1198); (2) Failure to Provide Meal Periods (Lab.
8 Code §§ 226.7, 512 and 1198); (3) Failure to Pay Minimum Wages (Lab. Code §§
9 1194, 1197, and 1198); (4) Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194,
10 and 1198); (5) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (6) Wage
11 Statement Penalties (Lab. Code § 226); (7) Waiting Time Penalties (Lab. Code §§
12 201–203); (8) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204); (9)
13 Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and (10) Penalties Under the
14 Private Attorneys General Act ("PAGA") (Lab. Code §§ 2698, et seq.) ("Released Class
15 Claims").

16 Settlement, ¶ 4.01.

17 PAGA Release. January 31, 2021 through the date of preliminary approval of the
18 settlement is the "PAGA Release Period." Plaintiff, on behalf of himself and as an agent and
19 proxy on behalf of the LWDA, shall release the Released Parties from the Released PAGA
20 Claims. "Released PAGA Claims" include:

21 any and all claims and/or causes of action under the PAGA that were asserted or could
22 have been asserted based upon the facts, claims and theories expressly pleaded in the
23 Complaint, and/or any facts, claims, or theories set forth in the LWDA Notice against
24 Defendant dated January 31, 2022, including but not limited to, claims for civil
25 penalties for alleged Labor Code violations under the PAGA, including the alleged (1)
26 failure to pay wages for all hours worked; (2) failure to pay overtime wages, (3) failure
27 to provide meal and rest breaks, (4) unreimbursed business expenses, (5) failure to keep
28 accurate and complete payroll records, (6) failure to provide accurate wage statements,
29 (7) failure to provide suitable seating, and (8) failure to pay wages due on separation of
30 employment

31 Settlement, ¶ 4.02.

32 Plaintiff also provided Defendant with a general release of all claims, whether known or
33 unknown, including unknown claims covered by Civil Code Section 1542. Settlement, ¶ 4.03.

34 **D. Class Notice and Settlement Administration**

35 Within forty five days following after the Preliminary Approval Date, Defendant shall
36 provide CPT Group, Inc., the appointed Settlement Administrator, the Class List with the
37 following information about each Class Member: name, last known home or mailing address,
38 Social Security number or, as applicable, other taxpayer identification number, the number of
39 Qualifying Workweeks worked during the Class Period (calculated by Defendant and sent to

1 the Settlement Administrator), and the number of Qualifying Pay Periods worked during the
2 PAGA Period (calculated by Defendant and sent to the Settlement Administrator). Settlement,
3 ¶¶ i, 3.03.

4 Within ten (10) calendar days of receiving the Class List from Defendant L3
5 TECHNOLOGIES, INC., the Settlement Administrator will send Class Members, by first-class
6 mail, at their last known addresses, the Court approved Class Notice. The Class Notice will
7 include a calculation of each Class Member's estimated share of the Net Settlement Amount.
8 Class Members will have forty-five (45) days from the date of mailing of the Class Notice to
9 postmark objections or Requests for Exclusion. Settlement, ¶ 3.03. Prior to mailing, the
10 Settlement Administrator will perform a search based on the National Change of Address
11 Database for information to update and correct any known or identifiable address changes. *Id.*
12 Any Class Notices returned to the Settlement Administrator as non-deliverable on or before the
13 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding
14 address affixed thereto and the Settlement Administrator will indicate the date of such re-
15 mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator
16 will promptly attempt to determine the correct address using a skip-trace, or other search using
17 the name, address and/or Social Security Number of the Class Member involved, and will then
18 perform a single re-mailing. Those Class Members who receive a re-mailed Class Notice will
19 have either (a) fifteen (15) calendar days from the date of re-mailing or (b) 45 days from the
20 initial mailing, whichever is later, to submit a Request for Exclusion, disputes concerning the
21 calculation of the Class Member's Individual Settlement Payment, or an objection to the
22 Settlement. *Id.*

23 The deadline by which Class Members must postmark or fax to the Settlement
24 Administrator Requests for Exclusion, postmark or fax disputes concerning the calculation of
25 Individual Settlement Payments, or postmark Notices of Objection to the Settlement
26 Administrator will be forty-five (45) calendar days from the initial mailing of the Class Notice
27 by the Settlement Administrator. Settlement, ¶ 3.04.

28 **1. Procedures for Class Member Disputes**

To the extent Class Members dispute the Individual Settlement Payment amount or
basis thereof, the Class Member/Aggrieved Employee may produce evidence to the
Settlement Administrator for the Class/PAGA Period showing that such information is

1 inaccurate. Defendant's records will be presumed correct, but the Settlement Administrator
2 shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve
3 it. All disputes must be submitted within 45 calendar days of the mailing of the Notice, or 15
4 calendar days of any re-mailing of the Notice, whichever is later. Settlement, ¶ 3.04(b).

5 **2. Procedures for Opting Out of the Class**

6 Any Class Member wishing to opt-out from the Settlement Agreement must sign and
7 fax or postmark a written Request for Exclusion to the Settlement Administrator within 45
8 calendar days of the mailing of the Notice, or 15 calendar days of any re-mailing of the Notice,
9 whichever is later. In the case of Requests for Exclusion that are mailed to the Settlement
10 Administrator, the postmark date will be the exclusive means to determine whether a Request
11 for Exclusion has been timely submitted. Settlement, ¶ 3.04(c).

12 **3. Procedures for Objecting to the Settlement**

13 To object to the Settlement Agreement, a Class Member may either postmark a valid
14 Notice of Objection to the Settlement Administrator within 45 calendar days of the mailing of
15 the Notice, or 15 calendar days of any re-mailing of the Notice, whichever is later, or appear in
16 person at the Final Fairness and Approval Hearing. Settlement, ¶ 3.04(d). For the Notice of
17 Objection to be valid, it must include: the Class Member's full name, address and telephone
18 number, and a written statement of the grounds of objection, and be signed by the objecting
19 Class Member or the Class Member's attorney, along with all supporting papers for the
20 objection as applicable (such as documents showing that the number of workweeks calculated
21 is incorrect). Settlement, ¶ 3.04(d).

22 **E. Uncashed Checks**

23 Proceeds represented by Individual Settlement Payment checks returned as
24 undeliverable and Individual Settlement Payment checks remaining un-cashed for more than
25 one hundred and eighty (180) calendar days after issuance will be transmitted to the State
26 Controller Unclaimed Property Fund in the name of the Class Member thereby leaving no
27 "unpaid residue" subject to the requirements of California Code of Civil Procedure Section
28 384, subd. (b). HM ¶ 33; Settlement, ¶ 3.06(i).

29 **IV. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE.**

30 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
31 and its members are too numerous for joinder to be practical; (2) the representative and absent

1 class members share a community of interest and questions of law and fact common to the class
2 predominate over questions unique to individual class members; (3) the representative's claims
3 are typical of the class' claims; and (4) the representative will fairly and adequately represent
4 the class' interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.
5 Moreover, in the settlement context, the Court can use a lesser standard to determine the
6 appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford*
7 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements
8 are met in this case.

9 **1. The Settlement Class Is Objectively Ascertainable.**

10 A class is ascertainable when it may be readily identified without unreasonable expense
11 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
12 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the
13 above-defined Class is ascertainable because its members may be identified by reference to
14 Defendant's records and Defendant has agreed to share the relevant information from its
15 records to facilitate the settlement process. HM, ¶ 10; Settlement, ¶ i. Therefore, the Settlement
16 Class is ascertainable.

17 **2. The Membership of the Settlement Class Is Sufficiently Numerous.**

18 The Settlement Class has sufficiently numerous members to render joinder impractical.
19 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
20 (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 1,194
21 Class Members. HM, ¶ 11, Settlement ¶ 2.04. Plaintiff maintains that it would be impractical
22 and economically inefficient to require each Class Member to separately maintain an
23 individual action or be joined as a named plaintiff in this action. The California Supreme Court
24 has upheld a class of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d
25 574. In light of these considerations, the Settlement Class' membership is sufficiently
26 numerous. HM, ¶ 11. *See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

27 **3. Class Members Share a Well-Defined Community of Interest.**

28 The community of interest requirement "embodies three factors: (1) predominant
common questions of law or fact; (2) class representatives with claims or defenses typical of
the class; and (3) class representatives who can adequately represent the class." *Sav-On Drug*
Stores, Inc. v. Superior Court (2004) 34 Cal. 4th 319, 326. It "does not mandate that class

1 members have uniform or identical claims.” *Capitol People First v. Dept. of Developmental*
2 *Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal
3 policies and “pattern and practice . . . in order to assess whether that common behavior toward
4 similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.
5 4th at 333).

6 To justify certification, the class proponent “‘must show ... that questions of law or fact
7 common to the class predominate over the questions affecting the individual members’”
8 *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington*
9 *Mut. Bank, FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient
10 standard for certification of a settlement class, the Parties agree that for the purposes of the
11 Settlement only, the claims of the Class Members all stem from the same sources. HM, ¶ 12.

12 In this case, Plaintiff asserts all class members were subject to the same or similar
13 operations and employment policies, practices, and procedures. The claims arise from
14 Defendant’s alleged uniform policy of failing to properly account for all time worked and
15 failing to, among other things, properly pay minimum and overtime wages, provide off-duty
16 meal and rest periods, indemnify Class Members for business expenses, timely pay wages
17 during employment and upon separation of employment, and provide compliant wage
18 statements, all of which Plaintiff claims constitute unfair business practices and give rise to
19 PAGA penalties. Plaintiff asserts that common questions include, but are not limited to: (1)
20 Whether Defendant failed to pay all wages earned to Class Members for all hours worked at the
21 correct rates of pay; (2) Whether Defendants failed to include all non-discretionary pay/bonuses
22 into the regular rate of pay; (3) Whether Defendant failed to provide the Class with all meal and
23 rest periods in compliance with California law; (4) Whether Defendant failed to pay the Class
24 one additional hour of pay on workdays they failed to provide the class with one or more meal
25 or rest periods in compliance with California law; (5) Whether Defendant failed to indemnify
26 the Class for all necessary business expenditures incurred during the discharge of their duties;
27 (6) Whether Defendant failed to provide the Class with paid sick leave; (7) Whether Defendant
28 knowingly and intentionally failed to provide the Class with accurate and complete itemized

1 wage statements; (8) Whether Defendant failed to provide the Class Members with all wages
2 earned every pay period during employment; (9) Whether Defendant willfully failed to provide
3 the Class with timely final wages; (10) Whether Defendants failed to provide the Class
4 Members with suitable seating; and (11) Whether Defendant engaged in unfair competition
5 within the meaning of Business and Professions Code section 17200, et seq., with respect to the
6 class. Therefore, common questions predominate. HM, ¶ 12. Therefore, common questions
7 predominate.

8 **4. Plaintiff Is Typical of the Settlement Class.**

9 The class representative must be similarly situated to the rest of the purported class. *See*
10 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in
11 California that the class representative must have identical interests with the class members.
12 The only requirements are ... that the class representative be *similarly* situated”) (emphasis in
13 original); *See also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship
14 between the Plaintiffs claims and the claims alleged on behalf of the class”). Plaintiff contends
15 that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts
16 that he, like absent Class Members was subject to the same relevant policies and procedures
17 governing his compensation, hours of work and meal and rest periods. Because Plaintiff
18 contends that he was subject to the same general course of conduct as absent Class Members,
19 resolving the common questions as they apply to Plaintiff will determine Defendants’ *prima*
20 *facie* liability to all Class Members. Moreover, Plaintiff’s claims could potentially be subject to
21 the same primary affirmative defenses as those of absent Class Members. Accordingly,
22 Plaintiff’s claims are typical of the Class. HM, ¶ 13.

23 **5. Plaintiff Will Adequately Represent the Settlement Class.**

24 The adequacy requirement is met where the plaintiff is represented by counsel qualified
25 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the
26 class’ interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words,
27 where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any
28 disabling conflicts of interest that might hinder the plaintiff’s ability to represent the class. HM,
¶ 14.

1 First, Plaintiff's counsel has supplied the Court with declarations to show that they are
2 adequate to represent the Settlement Class and that they have significant experience in
3 employment litigation generally, and wage and hour and employment-related class action
4 litigation specifically. See HM, ¶ 16; MM ¶¶ 3-7. Thus, Plaintiff's counsel is adequate to serve
5 as Class Counsel.

6 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
7 Class Members have strong and co-extensive interests in this litigation because they all worked
8 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
9 the same alleged course of conduct, and there is no evidence of any conflict of interest between
10 Plaintiff and the Class Members. HM, ¶ 15. Moreover, Plaintiff has demonstrated his
11 commitment to the Settlement Class by, among other things, retaining experienced counsel,
12 providing counsel with documents and extensively speaking with them to assist in identifying
13 the claims asserted in this case, and exposing himself to the risk of attorneys' fees and costs
14 awards against him if this lawsuit had been unsuccessful. HM, ¶15; See *generally* Declaration
15 of Alfredo Betancourt submitted herewith under separate cover. Thus, Plaintiff is adequate to
16 serve as Class Representative. Accordingly, this Court should find that Plaintiff and his counsel
17 are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

18 **6. Class Action Treatment Is the Superior Means For Resolving The**
19 **Claims Of The Class Members.**

20 Plaintiff further contends that a class action is also superior to other means adjudicating
21 the issues in this action. The predominance of common legal and factual questions shows that
22 this Court could fairly adjudicate the claims of Class Members through a single class action. In
23 view of the *theoretical* alternatives that proposed class members could potentially utilize –
24 individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement
25 (where there would be relatively little money at stake, but the claims would be time-consuming
26 to litigate)—a class action is plainly superior. Thus, this consideration supports conditional
27 class action treatment for purposes of this Settlement only. HM, ¶ 17.

28 ///

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1 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE**
2 **COURT SHOULD GRANT PRELIMINARY APPROVAL.**

3 **A. Legal Standard**

4 A class action settlement requires court approval. California Rules of Court (“CRC”),
5 Rule 3.769 provides three steps for approval:

- 6 1) Preliminary approval after submission of a written motion for preliminary
7 approval, the proposed class settlement, and the proposed class notice;
- 8 2) Issuance of notice of settlement to class members; and
- 9 3) A final settlement approval hearing where class members may be heard
10 regarding the settlement, and at which evidence and argument concerning the
11 fairness, adequacy, and reasonableness of the settlement is presented.

12 The decision to approve or reject a class settlement is committed to the Court’s broad
13 discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision
14 to approve class settlement may be reversed only upon a showing of “clear abuse of
15 discretion.” *Id.*

16 **B. The Settlement Is Presumptively Fair**

17 In assessing preliminary approval, a court evaluates if the settlement process has certain
18 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached
19 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
20 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
21 percentage of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford*
22 *Motor Co.*, (1996) 48 Cal.App.4th at 1794.

23 The class settlement here satisfies all of these factors. HM, ¶ 18. The Settlement
24 resulted from thorough, arms’ length, negotiations between experienced counsel for over an
25 entire year after sufficient informal discovery was exchanged to assess the relative strengths
26 and weaknesses of their respective cases and Defendant’s estimated exposure. *Id.* Both defense
27 counsel and Plaintiff’s counsel are particularly experienced in employment law and wage and
28 hour class actions and are experienced and qualified to evaluate the class claims, the viability of
the defenses, and the risks and benefits of settlement versus trial on a fully informed basis.
Counsel on both sides share the view that the Settlement is a fair and reasonable settlement in
light of the complexities of the case and uncertainties of class certification and litigation, and a

1 fair result for the Class Members. *Id.*

2 **C. The Settlement Satisfies the Kullar Factors for Approval.**

3 The *Kullar* case sets forth several factors a court should consider in determining
4 whether to approve a class settlement. These factors include: (1) the strength of plaintiff's
5 case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of
6 maintaining class action status through trial; (4) the amount offered in settlement; (5) the
7 extent of discovery completed and stage of the proceedings; (6) the experience and views of
8 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
9 members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the
10 Settlement satisfies each of these factors.

11 **1. Evaluation of Plaintiff's Case**

12 The Parties reached the Settlement through arm's-length negotiations. The Parties
13 conducted sufficient investigation and discovery to allow Counsel and the Court to act
14 intelligently. Plaintiff considered various sources of information in the lead-up to and during
15 the negotiations that enabled Plaintiff to achieve the Settlement at issue.

- 16 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's payroll records.
- 17 • Plaintiff's counsel requested that Defendant produce any and all policies on "off the
18 clock" work, meal and rest periods, sick leave, and reimbursement of expenses in effect
19 during the relevant time period. Defendant provided the requested policies.
- 20 • Plaintiff's counsel requested that Defendant provide the total number of employees,
21 paychecks, and the pay cycles during the relevant period. Defendant provided the
22 answers to each of these questions.
- 23 • Plaintiff's counsel requested sample time and payroll records for the relevant time
24 period. Defendant produced time and pay records for a 5% sample (based on data
25 available at the time) that Plaintiff's counsel randomly selected from a list provided by
26 the defense.
- 27 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
28 the records and determine if there was any pay discrepancy in timesheet hours versus
paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff
is prepared to provide the Court with the data analysis for *in camera* inspection upon its
request.
- Plaintiff's counsel analyzed the state of caselaw on meal and rest break claims, claims
for off-the-clock work, claims for unreimbursed expenses, and claims for not providing

1 sick leave.
2 HM, ¶ 19.

3 Defendant disclosed that there were approximately 120,459 workweeks during the
4 Class Period. Based on the information and data available from Defendant for the relevant time
5 period and with the aid of the data analyst, Plaintiff's counsel prepared "damages" estimates to
6 determine Defendant's maximum exposure in connection with the settlement negotiations.
7 Plaintiff's counsel calculated the maximum potential damages (exclusive of penalties and
8 interest) for meal period violations of \$1,377,990, rest period violations of \$4,445,481,
9 unreimbursed expenses violations of \$277,982, and minimum wage violations of \$4,802,911;
10 maximum damages for derivative claims of \$1,237,000 for wage statement penalties and
11 \$964,176 for waiting time penalties; and \$5,526,350 in potential civil penalties under the
12 PAGA. The estimates are in essence "home run" projections that do not factor in any of the
13 risks involved in litigating this Action and are not in line with reality, especially when
14 considering Defendant's policies and its position on the issues. HM, ¶ 20.

15 Regarding the PAGA, this estimate does not reflect the realities of this case and did not
16 take into account any of the risks discussed below and assumed a violation for every single pay
17 period. As such, the Parties discounted potential civil penalties for multiple reasons. For one,
18 Plaintiff's PAGA claims are predicated on the wage underpayment, meal, rest, business
19 expense reimbursement, and wage statement violations described above, and thus subject to the
20 same disputes and defenses. Plaintiff's counsel also assessed multiple penalties for the same
21 pay period for the same alleged violations of different Labor Code provisions and derivative
22 violations. The Parties are not aware of any California state courts awarding plaintiffs multiple
23 PAGA penalties for the same violation for the same pay period under different Labor Code
24 provisions. This may be because the PAGA does not provide for what many employers
25 characterize as claim splitting and not merely stacking. Additionally, PAGA states a court has
26 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2);
27 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing
28 PAGA award). Furthermore, recent reforms to the PAGA statute that took effect on June 27,
2024 include strict limitations on the ability to "stack" PAGA penalties. HM, ¶ 20.

The Settlement obviates the significant risk that this Court may deny certification of
some or all of Plaintiff's claims. Even if Plaintiff obtained certification of some or all of the
claims, continued litigation would be expensive, involving a trial and possible appeals, and

1 would substantially delay and reduce any recovery by the Class Members. While Plaintiff is
2 confident in the merits of his case, a legitimate controversy exists as to each cause of action. To
3 illustrate this consideration, below is brief summary of some of Defendant's arguments, all of
4 which Plaintiff disputes, but nevertheless acknowledges as potential threats to the Settlement
Class' claims. HM, ¶ 21.

- 5 • Defendant argues that the decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
6 (2012) weakened Plaintiffs' claims, on liability, value, and class certifiability as to the
7 meal and rest period claims. So long as an employer provides employees with a
8 "reasonable opportunity" to take a duty-free meal period, it has no further duty to
9 "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41.
10 Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
11 employee from taking a proper break, or otherwise failed to release the employee of all
12 control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason
13 that a particular employee may have failed to take a meal break." *Washington v. Joe's*
14 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendant contends that because it
15 has written meal and rest break policies that comply with California law, individualized
16 proof will be needed to establish liability on Plaintiff's meal period claims, thus
17 significantly threatening Plaintiff's ability to certify a class as to the meal period claim.
18 Defendant further contends that the alleged violation rate based on facially non-
19 compliant meal periods reflected in the time keeping records for the sample varies
20 widely across facilities, suggesting that meal break habits varied between different
21 groups and further supporting that individualized proof will be needed to establish
22 liability on Plaintiff's meal period claims. Defendant argues that Settlement Class
23 Members will testify that they were plainly advised by their supervisors, and fully
24 understood, that they were authorized to take meal periods within each five-hour period
25 worked and, in fact, took such breaks. Moreover, Defendant's timekeeping data cannot
26 show why a meal break does not appear in the time records. For example, a meal period
27 may have been authorized and taken, but simply not punched in and out.
- 28 • Defendant contends that there is no common proof for Plaintiff's claim that he was
required to work off-the clock ("OTC"). In fact, Defendant argues, time records do not
provide common proof because, by definition, they do not show such time. Defendant

1 argues that one would have to examine, and cross-examine for credibility, each
2 individual's separate claims of supposed OTC work. Further, Defendant argues, each
3 Class Member would need to overcome this credibility hurdle in the face of his/her
4 own time records, which show no OTC work and further would have to prove that
5 his/her individual manager knowingly suffered or permitted the work. Additionally,
6 Defendant has policies that required employees accurately record their time spent
7 working, so any each individual would have to further explain why they violated that
8 policy and submitted false time records.

- 9 • Defendant contends that L3 Technologies, Inc. facilities in CA, from a
10 timekeeping/recordkeeping perspective, operate on a facility-by-facility basis (in other
11 words, not all business units/facilities have the same timekeeping, recordkeeping
12 system). Defendant contends that this fact will be a significant hurdle to class
13 certification as it would tend to prove that individualized assessments would
14 predominate over common questions.
- 15 • Defendant contends that Plaintiff cannot recover wage statement penalties based upon
16 the failure to pay Labor Code section 226.7 premium wages for meal and rest period
17 violations. The recent *Naranjo* decision confirms that employers are entitled to assert
18 legitimate defenses that any potential violations are not willful (thus, negating the
19 “knowing and intentional” finding under § 226, precluding imposition of wage
20 statement penalties for omission of premium pay). *See Naranjo v. Spectrum Security*
21 *Services, Inc.*, 2023 DJDAR 1620 (Cal. Ct. App. March 1, 2023).
- 22 • There is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged
23 failure to indemnify for business expenses to be individual in nature and unfit for class
24 wide resolution. Defendant disputes Plaintiff’s claim that he and/or Class Members
25 were required to use their cell phones for work, and therefore disputes that employees
26 were owed reimbursement for cell phone use. Defendant also contends that it had
27 compliant business reimbursement policies, and did not require employees to incur any
28 business expenses it would not compensate them for.

HM, ¶ 21.

As noted above, Defendant contests liability, as well as the propriety of certification,
and is prepared to vigorously oppose certification and to defend against Plaintiff’s claims if the

1 Action is not settled. Given the potential damages, as well as the substantial risks to recovery
2 discussed herein, including the uncertainties in achieving class certification, Plaintiff's counsel
3 had to dramatically discount the value of the claims during settlement negotiations. Plaintiff's
4 counsel estimates a 50 percent likelihood of obtaining and maintaining certification of all of
5 Plaintiff's claims, which reduces the value of these claims from approximately \$18,631,970 to
6 approximately \$9,315,985. Defendant, however, asserts that there are significantly lower
7 prospects of certification. Plaintiff's counsel further estimates that there is a 50 percent chance
8 that Plaintiff will prevail at trial on his claims, further reducing the value of the claims to
9 approximately \$4,657,992. Defendant contends that Plaintiff's prospects of success at trial are
10 much lower. If this case advanced to trial and Class Counsel succeeded on all of Plaintiff's
11 claims, attorney's fees and costs may have significantly reduced the recovery awarded to the
12 Class. Furthermore, there is always a risk that a trial of this magnitude could become
13 unmanageable. A settlement of \$1,815,000 (approximately 9.74% of the maximum exposure
14 and 38.96% of the potential recovery) is a great result and a proportion sanctioned by existing
15 case law. *See In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002)
(approving settlement that only provided a 2% recovery based on the estimated liability
16 exposure). HM, ¶ 22.

17 While Plaintiff believes the evidence gathered through Plaintiff's discovery supports the
18 merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued litigation
19 presents significant risks that support a downward departure from his estimation of Defendant's
20 maximum liability exposure. In view of the risks, the Settlement reflects Class Counsel's
21 estimate of the total amount of damages, monetary penalties or other relief that the class could
22 reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and
23 other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for
24 these claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No.
12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. HM, ¶ 23.

2. Allocation of the PAGA Payment

25 The settlement of PAGA penalties in the sum of \$200,000, of which 75% (\$150,000)
26 will be paid to the LWDA and 25% (\$50,000) will be distributed to the Class, is reasonable and
27 appropriate under the circumstances. HM, ¶ 24. The Parties negotiated a good faith amount for
28 PAGA penalties to be paid to the LWDA and to the Settlement Class. Where, as here, the
parties reach a substantial settlement providing employees with monetary compensation for

underlying Labor Code violations, many of PAGA’s underlying policy objectives are satisfied. Accordingly, there exists a substantial likelihood that the Court would exercise its discretion and reduce the amount awarded for PAGA penalties even if Plaintiff proved successful at trial. Additionally, PAGA’s shorter statute of limitations justifies a limited allocation when compared to the amount allocated for Labor Code violations. Here, the \$200,000 PAGA Settlement Amount is well within the range approved by California courts and therefore should be approved. *Id.* Where settlements “negotiate[] a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).

3. Presence of Governmental Participant

As required under Labor Code section 2699(1)(2), Plaintiff will provide notice of this settlement to the LWDA. HM, ¶ 34, Ex. 9.

4. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Class Notice (attached as Exhibit 1 to the Settlement) and an opportunity to object. HM, ¶ 30. The parties’ proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

1 **VI. THE SETTLEMENT FAIRLY, REASONABLY, AND ADEQUATELY**
2 **COMPENSATES CLASS MEMBERS BECAUSE EACH CLASS MEMBER**
3 **WILL BE PAID BASED ON THE POTENTIAL EXTENT OF HIS OR HER**
4 **INJURY COMPARED TO OTHER CLASS MEMBERS.**

5 The Individual Class Settlement Payments will be paid to each Class Member based on the
6 number of Qualifying Workweeks a Class Member worked during the Class Period. In
7 addition, all Aggrieved Employees shall receive a pro rata share of the portion of the PAGA
8 Payment allocated to Aggrieved Employees based on their Qualifying Pay Periods during the
9 PAGA Period. HM, ¶ 29; Settlement ¶ 3.06 (g)(h). Because this method compensates Class
10 Members based on the extent of their potential injuries, in that Class Members who worked for
11 Defendant longer would have been subject to more alleged violations, it is fair, adequate, and
12 reasonable. *Id.*

13 **VII. ALLOCATION FOR CLASS COUNSEL’S ATTORNEYS’ FEES AND COSTS**
14 **IS APPROPRIATE.**

15 The settlement states Class Counsel may seek attorneys’ fees of \$605,000 (one-third of
16 the GSA) and up to \$5,000.00 for actual reasonable litigation costs and expenses incurred in
17 prosecuting the Action. Settlement ¶ 3.06 (b). These amounts are reasonable, given the facts
18 and circumstances of the case. HM, ¶ 25.

19 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
20 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
21 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the
22 “experienced trial judge is the best judge of the value of professional services rendered in his
23 court.” *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney
24 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the
25 result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Ca1. 5th 480, 503
26 (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved
27 fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Ca1. 5th 480. Many
28 courts have similarly approved fee awards equal to or greater than the percentage requested
here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of
the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the
common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of
settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class

1 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the
2 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
3 achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6) the other
4 cases Class Counsel turned down to devote time to this matter. HM, ¶ 26. Class Counsel met
5 and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed
6 hundreds of pages of data and documents provided by Defendant, researched applicable law,
7 provided estimates of "damages" for purposes of settlement discussions, and engaged in a full
8 day of mediation, among other tasks. *Id.*

9 Class Counsel have borne all the risks and costs of litigation and will receive no
10 compensation until recovery is obtained. HM, ¶ 27. Class Counsel is well-experienced in wage-
11 and-hour class action litigation and used that experience to obtain a fair result for the Class.
12 HM ¶16; MM, ¶¶ 3-7. Considering the amount of the attorney fees requested, the work
13 performed, and the risks incurred, the requested fees and costs are reasonable and should be
14 awarded. HM, ¶ 27.

15 **VIII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT TO**
16 **PLAINTIFF IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE**
17 **PRELIMINARILY APPROVED.**

18 Courts routinely approve enhancement awards to compensate named plaintiffs for the
19 services they provide and the risks they incur during class action litigation, often in much
20 higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115
21 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in
22 bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294
23 (approving \$50,000 enhancement award). The Settlement provides that Plaintiff may seek a
24 Class Representative Enhancement Payment of \$2,000. This amount is entirely reasonable
25 given Plaintiff's efforts in this action and the risks he undertook on behalf of Class Members.
26 HM, ¶ 28. Plaintiff has devoted many hours advancing the interests of the Settlement Class.
27 Plaintiff has done this by, among other things, retaining experienced counsel, providing them
28 with information about his work history with Defendant and Defendant's policies and practices
with respect to the wage and hour claims at issue, and being actively involved in the settlement
process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has

1 been exposed to significant risks, including the risk of an order to pay Defendant's attorneys'
2 fees and costs if this action had been unsuccessful (See Labor Code §§ 218.5-218.6). The
3 efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the
4 proposed Incentive Award is fair, adequate, and reasonable, and thus warrants preliminary
5 approval. HM, ¶ 33; *See generally* Declaration of Alfredo Betancourt.

6 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR**
7 **AND REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.**

8 With regard to the settlement administration costs provision, it is reasonable. Before
9 agreeing to CPT Group, Inc., the Parties sought and reviewed bids from other reputable third-
10 party administrators and CPT Group, Inc's bid was comparable. HM, ¶¶ 31-32, Exs. 6-8. Thus,
11 the settlement administration costs provision should be given preliminary approval.

12 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
13 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED**
14 **TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT**
15 **TIME TO EXERCISE THEIR RIGHTS**

16 This Court should approve the proposed plans for giving notice to the Settlement Class
17 and administering the Settlement. The standard for determining the adequacy of notice is
18 whether the notice has "a reasonable chance of reaching a substantial percentage of the class
19 members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes
20 multiple measures to ensure that as many Class Members as practicable receive actual notice of
21 the Settlement and have enough time to exercise their rights. The Settlement requires
22 distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 49. Although there are
23 current employee Class Members, it is uncertain whether Defendant's records of their contact
24 information include email addresses and Class Members, most of whom perform all of their
25 work away from a desk in a manufacturing facility, are not in a position to check their emails.
26 As such, notice by mail alone is fair, adequate, and reasonable. HM, ¶ 30.

27 With respect to its content, "[The] notice given to the class must fairly apprise the class
28 members of the terms of the proposed compromise and of the options open to dissenting class
members." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.

1 The purpose of the notice in class settlement context is to give class members sufficient
2 information to decide whether they should accept the benefits offered, opt out and pursue their
3 own remedies, or object to the settlement. *Id.* The Class Notice (Exhibit 1 to the Settlement)
4 provides Class Members with all pertinent information that they need to fully evaluate their
5 options and exercise their rights under the Settlement. Specifically, it clearly and concisely
6 explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class
7 Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be
8 bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be
9 allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be
10 resolved; and (9) the estimated Individual Settlement Payment for each Class Member.
11 Additionally, the Notice will include the number of Workweeks a Class Member had during the
12 Class Period and the number of PAGA Periods a PAGA Member had during the PAGA Period.
13 Accordingly, the Class Notice should be approved because it describes the Settlement with
14 sufficient clarity and specificity to explain to Class Members what this action is about, their
15 rights under the Settlement, and how to exercise those rights. As such, the parties' proposed
16 Class Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow
17 Class Members to make informed responses to the proposed settlement. HM, ¶ 30.

18
19 **XI. CONCLUSION**

20 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety
21 and adopt the proposed order submitted concurrently herewith.

22
23 Respectfully submitted,

MESSRELIAN LAW INC.

24
25 Dated: October 28, 2024

By: 

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MARALLE MESSRELIAN
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ALFREDO BETANCOURT, and all others
similarly situated