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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

NOE PONCE CEJA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

VENTURE DYNAMICS ENTERPRISES,
INC. and DOES 1 to 100,

Defendants.

Case No. 37-2022-00004908-CU-OE-CTL
Hon. Katherine Bacal
Dept. C-69

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 12, 2024
Time: 11:00 a.m.
Dept.: C-69
Reservation No.: 2979210

Action filed: February 7, 2022

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

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1 This Memorandum is submitted in support of Plaintiff Noe Ponce Ceja's ("Plaintiff")
2 Motion for Conditional Certification and Preliminary Approval of Class Action and PAGA
3 Settlement. The proposed non-reversionary settlement in the gross sum of \$1,000,000.00 is on
4 behalf of approximately 947 class members except as to any Class Members who elect to
5 exclude themselves ("opt-out") from the settlement Class.

6 **INTRODUCTION**

7 On February 7, 2022, Plaintiff filed a class action complaint against Defendant in San
8 Diego County Superior Court entitled NOE PONCE CEJA v. VENTURE DYNAMICS
9 ENTERPRISES, INC. *and Does 1 through 100*, in the Superior Court of California, County of
10 San Diego, Case No. 37-2022-00004908-CU-OE-CTL. On March 23, 2022, Plaintiff filed the
11 operative First Amended Complaint (the "Action"). The Action alleges: (1) Violation of
12 Business & Professions Code §17200, et seq. (2) Violation of Labor Code §§ 204, 510, 1194,
13 and 1198; (3) Inaccurate Wage Statements in Violation of Labor Code §226; (4) Failure to
14 Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Work Expenditure
15 Reimbursements; (7) Waiting Time Penalties; (8) Penalties Under PAGA Labor Code §2698, et
16 seq. On June 23, 2022, Defendant removed the Action to the United States District Court,
17 Southern District of California, Case No. 3:22-cv-00918-L-AHG ("Federal Court").

18 On March 22, 2023, following the Parties' Joint Motion to Remand to State Court, the
19 Federal Court issued an order remanding the Action back to the Superior Court of California,
20 County of San Diego.

21 The parties are lodging a Stipulation and Proposed Order to Allow Plaintiff to File Third
22 Amended Complaint, to add a cause of action for failure to pay wages under the Fair Labor
23 Standards Act (FLSA), concurrently herewith.

24 On January 31, 2023, Plaintiff and Defendants (the "Parties") participated in an all-day
25 mediation presided over by Steve Rottman, which led to the Class Action and PAGA Settlement
26 Agreement; a true and correct copy of which is attached to the Declaration of Janelle Carney as
27 **Exhibit 1.**

1 Class Counsel have concluded, after taking into account sharply disputed factual and
2 legal issues involved in this litigation and the risks attending further prosecution, that the
3 substantial settlement to be received pursuant to the compromise and settlement of the litigation
4 is in the best interest of the Class Members. Plaintiff recognizes the expense and length of
5 continued proceedings necessary to continue the litigation against Defendant through trial and
6 through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of
7 denial of a motion for class certification, the challenges of seeking PAGA relief for all PAGA
8 Representative Action Members, the uncertain outcomes resulting from further litigation, and the
9 difficulties and delays inherent in such litigation. Plaintiff is also aware of the burdens of proof
10 necessary to establish liability for the claims asserted in the Action, Defendants' defenses, and
11 the difficulties in establishing damages for the Plaintiff and Class Members.

12 **I. THE CLASS REPRESENTED**

13 The Settlement Class consists of the following:

14 All current and former non-exempt hourly employees employed by Defendant Venture
15 Dynamics Enterprises, Inc. and placed at NASSCO, Colannas, and/or Bay City in the State of
16 California between February 7, 2018 and May 31, 2023 (the "Class Period").

17 **II. THE TWO-STEP APPROVAL PROCESS**

18 Any settlement of class litigation must be reviewed and approved by the Court. This is
19 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
20 notice has been distributed to the Class Members for their comment or objections. The Manual
21 for Complex Litigation Second states at §30.44 (1985):

22 A two-step process is followed when considering class settlements ... if
23 the proposed settlement appears to be the product of serious, informed,
24 non-collusive negotiations, has no obvious deficiencies, does not
25 improperly grant preferential treatment to Class Representatives or
26 segments of the class, and falls within the range of possible approval, then
27 the court should direct that notice be given to the Class Members of a
28 formal fairness hearing, at which evidence may be presented in support of
and in opposition to the settlement.

29 Thus, the preliminary approval of the trial court is simply a conditional finding that the
30 settlement appears to be within the range of reasonableness for acceptable settlements. As

1 Professor Newberg commented, “The strength of the findings made by a judge at a preliminary
2 hearing or conference concerning a tentative settlement proposal may vary. The court may find
3 that the settlement proposal contains some merit, is within the range of reasonableness required
4 for a settlement offer or is presumptively valid subject only to any objections that may be raised
5 at a final hearing.” Newberg on Class Actions, 3rd Ed., 11.26.

6 The procedures for submission of a proposed settlement for preliminary approval are
7 discussed at Newberg on Class Actions, 3rd Ed., §11.24 – 11.26. Newberg observes at §11.24:

8 **When the Parties to an action reach a monetary settlement, they will usually**
9 **prepare and execute a joint stipulation of settlement, which is submitted to**
10 **the court for preliminary approval. The stipulation should set forth the**
11 **central terms of the agreement, including but not limited to, the amount of**
12 **the settlement, form of payment, manner of determining the effective date of**
13 **settlement, and any recapture clause.**

14 While the details of the recovery for each Class Member are set forth in the proposed
15 Settlement Agreement filed concurrently herewith and attached to the Declaration of Janelle
16 Carney in support of Preliminary Approval, the settlement for each participating Class Member
17 and PAGA Representative Action Member is fair, reasonable, and adequate, given the inherent
18 risk of litigation, the risk relative to class certification, and the costs of litigation. (**Declaration of**
19 **Janelle Carney ¶ 7**) As explained below, the average settlement share for each Class Member is
20 \$1,055 (\$1,000,000.00 / 947employees).

21 To prevent fraud, collusion, or unfairness to the class, the settlement or dismissal of a
22 class action requires court approval. The court must determine whether the settlement is fair,
23 adequate, and reasonable. (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794.)

24 The Court must look to the admissible evidence regarding the following factors specified
25 in Dunk v. Ford Motor Co., supra at 1800-1801:

- 26 A. Strength of Plaintiff’s case;
- 27 B. The risk, expense, complexity and likely duration of further litigation;
- 28 C. The risk of maintaining class action status through trial;

1 D. With respect to the amount of the settlement, the number of "cents on the
2 dollar" or percentage of total damages the settlement represents; and

3 E. Presence (or lack thereof) of a governmental participant.

4 Further, the Court must take into consideration the additional Kullar factor which is "the
5 most important factor is the strength of the case for the plaintiffs on the merits, balanced against
6 the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. 168 Cal. App 4th 116, 118)
7 (*See Carney Decl.*, ¶8) Plaintiff contends the settlement represents approximately 47% of the
8 reasonable value of all claims. (*Carney Decl.* ¶8). The settlement is for a maximum amount of
9 \$1,000,000.00 for approximately 947 class member employees. (*Carney Decl.* ¶¶ 2 & 6).
10 Plaintiff asserts that this is an excellent settlement for each class member and PAGA
Representative Action member.

11 The distribution of payment to the Participating Class Members and PAGA
12 Representative Action members will occur as set forth in ¶¶ 3-4 of the Settlement Agreement:

13 1. Procedure for Payment of Individual Settlement Payments:

14 (1) Defendant will pay \$500,000.00 within 15 business days after the Effective Date.
15 The "Effective Date" is the later of (1) the date on which all time limitations for filing an appeal
16 from the Court's Judgment and Final Order Granting Approval of Class Action Settlement have
17 expired without a notice of appeal having been timely filed (that is, 31 calendar days from entry
18 of final judgment) or (2) if a timely appeal is filed, the date of the final resolution of that appeal
19 and any subsequent appeals resulting in final judicial approval of this class action settlement
20 ("First Lump Sum Payment"); and

21 (2) Defendant will pay \$500,000.00 within six (6) months after the date of the First
22 Lump Sum Payment. Within fourteen (14) days after Defendants fund the Gross Settlement
23 Amount, the Administrator will mail checks for all Individual Class Payments, all Individual
24 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class
25 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
26 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
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1 Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not
2 precede disbursement of Individual Class Payments and Individual PAGA Payments.

3 Settlement Class members are not required to submit a claim form to receive a payment
4 (“Individual Settlement Payment”) from the Settlement. Individual Settlement Payments will be
5 determined and paid as follows:

6 A. The Settlement Administrator shall first deduct from the Maximum Settlement
7 Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s
8 costs and expenses, the Class Representative Enhancement Payment, the Settlement
9 Administrator’s fees and expenses for administration, and the amount of PAGA civil penalties
10 designated as payable to the LWDA. The remaining amount shall be known as the “Net
11 Settlement Amount.”

12 Within 10 business days following the full funding of the Maximum Settlement Amount
13 with the Settlement Administrator, the Settlement Administrator will calculate each Settlement
14 Class member’s Settlement Payment, and will prepare and mail the Individual Settlement
15 Payments to the participating Settlement Class members. (**Carney Decl, Exh. 1: Settlement**
16 **Agreement, ¶ 4**) To save on costs associated, the Settlement Administrator will issue one
17 payment after all the funds have been disbursed.

18 The settlement amount balanced against the merits of the Plaintiff’s case is strong as all
19 factors listed supra are discussed in detail consistent **Declaration of Janelle Carney (Carney**
20 **Decl.)**, filed concurrently herewith.

21 **III. THE PRESUMPTION OF FAIRNESS**

22 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
23 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
24 conducted in good faith. Newberg, §11.51; In re Chicken Antitrust Litigation, 560 F.Supp 957,
25 962 (N.D. Ga. 1980); Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989); Mars Steel Corp. v.
26 Continental Illinois National Bank and Trust Co., 834 F.2d 677, 682 (7th Cir. 1987). Courts do
27 not substitute their judgment for that of the proponents, particularly where, as here, settlement
28 has been reached with the participation of experienced counsel familiar with the litigation.

1 Hammon v. Barry, 752 F.Supp 1087 (D.D.C. 1990); Steinberg v. Carey, 470 F.Supp. 471
2 (S.D.N.Y. 1979); In re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979),
3 aff'd in part, rev'd in part in 645 F.2d 488 (5th Cir. 1981); Sommers v. Abraham Lincoln Federal
4 Savings & Loan Association, 79 F.R.D. 571 (E.D. Pa. 1978).

5 While the recommendations of counsel proposing the settlement are not conclusive, the
6 Court can properly take them into account, particularly where, they have been involved in
7 litigation for some period of time, appear to be competent, have experience with this type of
8 litigation, and have obtained substantial evidence from the opposing party. See Newberg,
9 §11.47. Here, the two (2) Plaintiff firms involved in this action have a great deal of experience in
10 wage and hour class action litigation. Janelle Carney of Janelle Carney – Attorney at Law, APC
11 has been approved as Class Counsel in over 300 wage and hour class actions. Adam Rose and
12 Emanuel M. (Manny) Starr of Frontier Law Center have been approved as Class Counsel in
13 several matters over the years. A sampling of such cases is listed in the concurrently filed
14 declarations of Janelle Carney and Manny Starr. Class Counsel and the Plaintiff have been
15 actively engaged in resolving this matter, hiring a damage expert at considerable cost to assist
16 with the analysis of the financial records produced by Defendants for mediation, and to prepare
17 for filing class certification.

18 The settlement amount is fair and reasonable based on a review of all objective evidence.
19 The Parties' assessment of the matter is based on extensive research before and during the
20 litigation, and written exchange of information and documents.

21 **IV. PROPOSED SHARE PER CLASS MEMBER**

22 **A. Class Member Compensation**

23 Each Participating Class Member who does not request exclusion will receive payments
24 based on the following formula:

25 From the Net Settlement Amount, the Settlement Administrator will calculate each
26 Settlement Class member's Individual Settlement Payment based on the following formula:

27 i. PAGA Amount: The \$10,000.00 payable to the Settlement Class members
28 as PAGA civil penalties shall be designated as the "PAGA Amount." Each PAGA Aggrieved

Employee who was employed by Defendant at any time between January 17, 2021 to May 31, 2023, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees between January 17, 2021 to May 31, 2023.

ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Wage Statement Amount.” Each participating Settlement Class member who was employed by Defendant at any time between February 7, 2021 to May 31, 2023, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period.

iii. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time between February 7, 2019 and May 31, 2023.

iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period. (Carney Decl., Exh. 1, ¶ 4)

Each Class Member will receive a notice that details their estimated Individual Settlement Payment amount based on proportionate number of workweeks worked during the Class Period. In this case, Class Members who do not opt out will receive an Individual Settlement Share.

1 In addition to the settlement sums paid to Participating Settlement Class Members, the
2 named Plaintiff, Noe Ponce Ceja, will request a Class Representative Enhancement of Seven
3 Thousand Five Hundred Dollars (\$7,500.00) for his role as a class representative during the
4 tenure of this litigation. The Class Representative Enhancement also includes Plaintiff's
5 execution of a general release of all claims, known or unknown, pursuant to Civil Code ¶ 1542
6 (**Carney Decl., Exh. 1: Settlement Agreement ¶ 2B**). The enhancement takes into
7 consideration the risks, time, effort, and expenses incurred by the named Plaintiff in coming
8 forward to litigate this matter on behalf of all Class Members. It is also intended to compensate
9 Plaintiff for his efforts in protecting the class members' rights. (See **Declaration of Noe Ponce**
10 **Ceja** filed concurrently herewith.) The settlement achieved is broken down further:

- | | | |
|----|--------------------------------------|---|
| 11 | 1) Maximum Settlement Amount: | \$1,000,000.00 |
| 12 | 2) Attorneys' Fees and Costs: | Attorneys' Fees: \$333,333.33 |
| 13 | | (33.33% of the total settlement); |
| 14 | | Costs not in excess of \$25,000.00, as |
| 15 | | verified by Class Counsel and approved |
| 16 | | by the Court; |
| 17 | 3) Class Representative Enhancement: | \$7,500.00; |
| 18 | 4) Settlement Administration Costs: | Not to exceed \$18,000.00 (maximum |
| 19 | | amount); |
| 20 | 5) PAGA Payment: | \$40,000.00 (\$30,000.00 (75%) to the |
| 21 | | LWDA and \$10,000.00 (25%) to the |
| 22 | | aggrieved employees) of \$40,000 |
| 23 | | allocated as PAGA penalties per <u>LC</u> § |
| 24 | | 2649, <u>et seq.</u>); and |
| 25 | 6) Net Settlement Amount: | \$586,166.67 to be distributed to the |
| 26 | | settlement class. |

26 Each PAGA Aggrieved Employee, regardless of whether he or she timely requests to opt-
27 out of the class action portion of the Settlement (i.e., the Released Class Claims), will receive a

1 portion of the PAGA Settlement Share allocated on a per capita basis. Each PAGA Aggrieved
2 Employee who was employed by Defendant at any time between January 17, 2021 to May 31,
3 2023, regardless of whether they timely submit a Request for Exclusion, shall receive a portion
4 of the PAGA Amount proportionate to the number of workweeks that he or she worked during
5 the aforementioned time period compared to the aggregate number of workweeks worked by all
6 PAGA Aggrieved Employees between January 17, 2021 to May 31, 2023.

7 At the very least, the Net Settlement Amount (NSA) will be \$586,166.67. The NSA is
8 based on the court approving all the requested amounts listed above. To the extent any request is
9 not approved, the Net Settlement Amount will increase accordingly. With an NSA of
10 approximately \$586,166.67, each Class Member will receive an individual settlement share that
11 is equal to a pro rata share of the Net Settlement Amount.

12 There are 947 individuals and no more than 51,364 workweeks as of April 1, 2023. Based
13 on a review of its records as of April 1, 2023, Defendant estimates there are 947 Class Members
14 who collectively worked a total of approximately 51,364 Workweeks. Fairness of the settlement
15 is further demonstrated by risks of non-certification, trial or appeal. It is extremely unlikely that
16 the majority of the current employees in the Class could or would maintain individual actions
17 against Defendants.

18 **V. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT**

19 Non-settling parties or third parties sometimes attempt to object to settlements, but the
20 right of non-settling parties to object even at the final settlement approval hearing, let alone the
21 preliminary approval hearing, is quite limited. Generally, only Class Members have standing to
22 object to a proposed settlement. “Beginning from the unassailable premise that settlements are to
23 be encouraged, it follows that to routinely allow non-Class Members to inject their concerns via
24 objection at the settlement stage would tend to frustrate this goal.” Gould v. Alleco, Inc., 883
25 F.2d 281, 284 (4th Cir. 1989).

26 As Newberg observed, even non-settling defendants in a multiple-defendant litigation
27 context have no standing to object to the fairness or adequacy of the settlement by other
28 defendants; they are limited to objecting to any terms that would preclude them from seeking

1 indemnification from the settling defendants. Newberg at §11.55.

2 **VI. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

3 The Parties have finalized a formal Settlement Agreement. The Parties are filing all
4 settlement and notice documents with this Motion for Conditional Certification and Preliminary
5 Approval of Class Action and PAGA Settlement: **(1) Class Action and PAGA Settlement**
6 Agreement (“Settlement Agreement”) (see **Exhibit 1** to the **Decl. Carney**); because this is a non-
7 reversionary settlement, upon the expiration of the Response Deadline, Participating Settlement
8 Class Members will receive one (1) check for their settlement amount based on the formulas
9 listed supra. Each PAGA Aggrieved Employee, regardless of whether he or she timely requests
10 to opt-out of the class action portion of the Settlement (i.e., the Released Class Claims), will
11 receive a portion of the PAGA Settlement Share allocated on a per capita basis. The Participating
12 Settlement Class Members do not have to submit a claim form in order to receive their share of
13 the Settlement. The Parties respectfully request that this Court approve the Notice (attached to
14 the **Settlement Agreement** as **Exhibit 1**) to be disseminated to the Class Members consistent
15 with the manner and timing as set forth in this Memorandum and in the Settlement Agreement.

16 The Parties have agreed to retain Rust Consulting, Inc. (“Rust”), as the Settlement
17 Administrator to perform the notice and other claims administration functions set forth within the
18 Settlement Agreement. (Rust’s qualifications and estimate are attached as **Exhibits 2-3** to the
19 **Decl. Carney ¶¶ 14 & 16**). The current estimate of Rust is in the amount of \$17,338.00. Any
20 amount less than the estimated amount to administer will be returned to the Net Settlement
21 Amount for distribution to Participating Settlement Class Members.

22 **VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
23 **OBJECTIVE EVIDENCE**

24 The settlement that has been reached, subject to this Court’s approval, is the product of
25 tremendous effort, time, and expense by the Parties and their counsel. The settlement was
26 reached after factual and legal research, informal data exchange, including an analysis of
27 Plaintiff’s and a 25% sampling of Class Members’ payroll records, wage statements, and time
28 records, review of hundreds of pages of documents, including Defendant’s policies, and one (1)

1 full-day mediation. (**Carney Decl. ¶ 11**) The settlement amount is, of course, a compromise
2 figure. It also considered the possibility that if a settlement were reached after many months or
3 even years of litigation, the great expenses and attorneys' fees of litigation would cause
4 Defendant to decrease what it was willing to offer. Furthermore, Plaintiff also took into
5 consideration the time delay and financial repercussions in the event of liability trials, numerous
6 damages trials, and appeal by Defendant.

7 **VIII. CONDITIONAL CERTIFICATION OF THE CLASS**

8 **A. Class Certification is Appropriate in this Case**

9 The proposed settlement seeks conditional certification of a settlement class pursuant to
10 Rule of Court 3.769(d). The certification of the class is essential to the settlement. California
11 public policy favors the use of the class action device. Richmond v. Dart Industries (1981) 29
12 C3d 462, 469. CCP §382 authorizes class suits in California when "the questions is one of the
13 common or general interest, of many persons, or when the parties are numerous, and it is
14 impracticable to bring them all before the courts, one or more may sue or defend for the benefit
15 of all." To obtain certification, a party must establish the existence of both an ascertainable class
16 and a well-defined community of interest among class members. Linder v. Thrifty Oil Co.
17 (2000) 23 Cal. 4th 429, 435. The "community of interest" requirement depends on three factors:
18 (1) whether common issues of law or fact predominate; (2) whether the class representatives
19 have claims that are typical of the class; and (3) whether the class representatives will adequately
20 represent the class. Richmond, 29 Cal.3d at 470. Because the policy of favoring use of class
21 actions is so strong, any doubts as to the appropriateness of class treatment must be resolved in
22 favor of certification, subject to later modification. Richmond, 29 Cal.3d at 473-75. Except in
23 extraordinary circumstances, the trial court does not weigh the merits of the claims in ruling on a
24 motion for class certification. Linder, supra, 23 Cal.4th at 443. The seminal California Supreme
25 Court decision of Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 326 has
reemphasized the procedural nature of the certification motion.

26 Here, class treatment is warranted for the class for purposes of this Settlement only.
27 (**Carney Decl. ¶ 8**). Plaintiff contends that evidence of Defendant's policies and procedures
28

1 with the class member information establish that these claims should be conditionally certified at
2 this time for Settlement only. Plaintiff contends that the evidence consists of payroll records,
3 time records, and pay stubs given to all hourly non-exempt employees.

4 **B. The Proposed Class is Ascertainable and Numerous**

5 For a class to exist, the class description must be sufficiently definite so that it is
6 administratively feasible for the court to determine whether a particular individual is a member
7 of the proposed class by reference to objective criteria. Plaintiff contends that for this settlement,
8 the class definition is sufficiently specific to enable potential class members, and the court, to
9 readily determine the parameters of the class. (See, Clothesrigger, Inc. v. GTE Corp., (1987) 191
10 Cal.App.3d 605, 617.) At approximately 947 settlement class members as of April 1, 2023, this
11 is sufficient to satisfy numerosity requirements.

12 **C. Common Issues of Law or Fact Predominate**

13 Plaintiff contends that for purposes of settlement only, that common questions of law and
14 fact predominate. As employers, Defendants are required to pay wages to all their employees in
15 accordance with the Labor Code and IWC Wage Order 16-2001. (See, LC §§1173, 1178.5,
16 1182; Tidewater Marine Western, Inc. v. Bradshaw (1966) 14 Cal.4th 557, 561-562). As
17 indicated supra, Plaintiff contends that the predominant legal and factual issues in this case are
18 whether the meal break claims through Plaintiff's prism of the case warrants certification for the
19 purposes of settlement. Plaintiff contends that, in assessing whether common issues predominate
20 over individual issues for the purposes of settlement, it is not necessary that the class members'
21 claims or their circumstances be identical. L.A. Fire & Police Protective League, supra, 23
22 Cal.App.3d at 74 (in an overtime action, the fact that there were 19 different subgroups of
23 employees did not preclude finding that common issues predominated.) Plaintiff contends that
24 for the purposes of settlement, California law authorizes class actions when a defendant's
25 corporate policies result in injury to a group of plaintiffs. In Stephens v. Montgomery Ward &
26 Co., Inc. (1987) 193 Cal.App.3d 411, 421 See Sav-On, supra. Plaintiff has objective evidence that
27 Defendants failed to properly pay Plaintiff and employees at their correct regular rate.

28 /////

1 **D. Plaintiff's Claims Are Typical of the Class Claims**

2 Plaintiff contends that typicality simply means that the representative's claims are similar
3 to those of class members, and that the interests of the class representative need not be identical
4 to those of other class members; the class representative must simply be similarly
5 situated. B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347;
6 Classen v. Weller (1983) 145 Cal.App.3d 27, 46. According to the Plaintiff, he worked pursuant
7 to Defendants' corporate policies and procedures, which he claims were applicable to all hourly
8 non-exempt employees.

9 **E. Adequacy of Representation**

10 Adequacy of representation depends on whether the named class Plaintiff and the
11 Plaintiff's attorneys qualify to conduct the proposed litigation and whether the named
12 Plaintiff's interests are antagonistic to those of the classes. In this case, Plaintiff contends that
13 the representative Plaintiff's injuries and damages are similar to those of the class he seeks to
14 represent. Plaintiff claims that he has no claims that are antagonistic to the class. (see **Decl.**
15 **Ponce ¶ 11**). Plaintiff's counsel is experienced and qualified. (**Carney Decl. ¶¶ 2-4; Decl.**
Adam Rose ¶¶ 19-24)

16 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

17 The Parties propose the following schedule for the fairness hearing and final proceedings,
18 presuming the Court enters its order granting approval on the date of the hearing:

- | | |
|--|-------------------------------------|
| 19 1. Deadline for Defendant to provide Class List to | within fourteen (14) calendar days |
| 20 Settlement Administrator and Plaintiff's Counsel: | of service of Preliminary Approval |
| 21 | Order); |
| 22 2. First Mailing of Notice, etc., to the Class: | within ten (10) business days after |
| 23 | Settlement Administrator receives |
| 24 | Class List; |
| 25 3. Follow-up mailing to Class (when mail returned): | Within five (5) business days after |
| 26 | receipt of returned mail; |
| 27 | |
| 28 | |

4. Objection/Exclusion Deadline Date: 60 calendar days from the date Notice mailed
5. Filing date for Supplemental Briefs, Attorney's Fees Request and Request for Reimbursement of Costs: 16 court days prior to Fairness Hearing
6. Filing date for Final Approval Papers & file any response to any objectors and Settlement Administrator Report/declaration to be filed no later than: (16 court days prior to the heading for Final Approval/ Fairness Hearing)
7. Date for Final Fairness Hearing: Plaintiff requests a hearing date 90 days after the hearing on Plaintiff's Motion for Preliminary Approval.

X. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Parties request this Court, as part of the preliminary approval process, to do the following:

1. Review and approve the proposed Class Action and PAGA Settlement Agreement.
2. Conditionally certify for settlement purposes only, a Class consisting of: All current and former non-exempt hourly employees employed by Defendant Venture Dynamics Enterprises, Inc. and placed at NASSCO, Colannas, and/or Bay City in the State of California between February 7, 2018 and May 31, 2023 (the "Class Period").
3. Confirm Janelle of Janelle Carney – Attorney at Law, APC and Manny Starr and Adam Rose of Frontier Law Center as Class Counsel; and Noe Ponce Ceja as Class Representative.
4. Conditionally approve the PAGA settlement amount of \$40,000.00, subject to obtaining Final Approval of the class action settlement.
5. Approve an order preliminarily approving the proposed settlement on a class basis, direct notice to be given to the Class, and setting a hearing for final review

1 of the proposed settlement on or about 90 calendar days after the hearing on the
2 motion for preliminary approval; and

- 3 6. Approve Rust Consulting, Inc. as Settlement Administrator to handle the notice
4 procedures as set forth in its proposal. (A true and correct copy of which is
5 attached as **Exhibits 2-3 to Decl. Carney**).

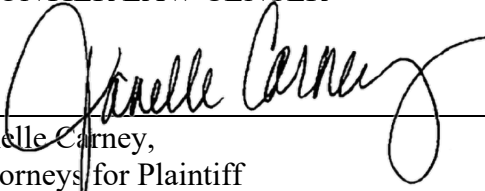
6 **CONCLUSION**

7 Accordingly, Plaintiff respectfully requests that the settlement be given preliminary
8 approval and notice be approved for mailing to the class. The proposed Notice is included with
9 the settlement documents attached to the Declaration of Janelle Carney filed concurrently
herewith.

10 Dated: May 30, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

11
12 By:



Janelle Carney,
Attorneys for Plaintiff