

1 Zachary M. Crosner (SBN 272295)
zach@crosnerlegal.com
2 Brandon Saunders (SBN 273156)
bSaunders@crosnerlegal.com
3 Chad Saunders (SBN 257810)
chad@crosnerlegal.com
4 CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
5 Beverly Hills, CA 90210
Tel: (866) 276-7637

6 [Additional Counsel on Next Page]

7 Attorneys for Plaintiffs Jared Deaver, Daniel
8 Ramirez and Brad Smith

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SACRAMENTO**
12

13 JARED DEEVER, as an individual and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 v.

17 BLUE DIAMOND GROWERS, a California
corporation; et al,

18 Defendants.

19 AND RELATED CONSOLIDATED CASES.
20
21
22

Case No. 34-2022-00316490-CU-OE-GDS
(Consolidated with Case Nos. 34-2022-
00319378-CU-OE-GDS and 34-2021-
00304425-CU-OE-GDS)

Assigned to Hon. Lauri A. Damrell, Dept. 22

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 31, 2025
Time: 9:00 a.m.
Dept.: 22

RESERVATION NO. A-316490-001

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

1460 Westwood Boulevard

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Larry W. Lee (State Bar No. 228175)

lwlee@diversitylaw.com

Christine S. Lee (State Bar No. 339947)

christine@diversitylaw.com

DIVERSITY LAW GROUP, P.C.

515 S. Figueroa St., Suite 1250

Los Angeles, California 90071

(213) 488-6555

(213) 488-6554 facsimile

William L. Marder (SBN 170131)

bill@polarislawgroup.com

POLARIS LAW GROUP

501 San Benito Street, Suite 200

Hollister, CA 95023

Telephone: (831) 531-4214

Facsimile: (831) 634-0333

Edward W. Choi, Esq. SBN 211334

edward.choi@choiandassociates.com

LAW OFFICES OF CHOI & ASSOCIATES

515 S. Figueroa St., Suite 1250

Los Angeles, CA 90071

Telephone: (213) 381-1515

Facsimile: (213) 465-4885

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	1
III.	THE PROPOSED SETTLEMENT TERMS.....	3
A.	Certification of the Settlement Class.....	4
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration.....	5
D.	The Class Notice	5
E.	Right to Correct Information, Opt Out, or Object.....	5
F.	Release of Claims.....	6
G.	Plaintiffs' Enhancement Awards.....	6
H.	Attorney's Fees and Costs.....	7
I.	PAGA and Notice to the LWDA.....	8
J.	Uncashed Funds	8
IV.	ARGUMENT	8
A.	Standard of Review for a Class Action Settlement	8
B.	The Proposed Settlement Class Should Be Conditionally Certified	9
C.	The Proposed Settlement Meets the Dunk and Kullar Factors and is	11
	within the Range of Reasonableness	11
V.	CONCLUSION	17

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u>	
(2000) 85 Cal.App.4th 1135.....	16
<u>Alvarado v. Dart Container Corp.</u>	
(2018) 4 Cal.5th 542.....	12
<u>Amaral v. Cintas Corp. No. 2</u>	
(2008) 163 Cal.App.4th 1157.....	14
<u>Carrington v. Starbucks Corp.</u>	
(2018) 30 Cal.App.5th 504.....	15
<u>Class Plaintiffs v. City of Seattle</u>	
(9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	8
<u>Cochran v. Schwan's Home Service, Inc.</u>	
(2014) 228 Cal. App. 4th 1137.....	14
<u>Dunk v. Ford Motor Co.</u>	
(1996) 48 Cal.App.4th 1794.....	8, 9
<u>Global Minerals & Metals Corp. v. Superior Court</u>	
(2003) 113 Cal.App.4th 836.....	9
<u>Hernandez v. Restoration Hardware, Inc.</u>	
(2018) 4 Cal.5th 260.....	7
<u>Jennings v. Open Door Mktg. Inc.</u>	
(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	15
<u>Jones v. Farmers Ins. Exch.</u>	
(2013) 221 Cal.App.4th 986.....	10
<u>Kullar v. Foot Locker Retail, Inc.</u>	
(2008) 168 Cal.App.4th 116.....	11
<u>Laffitte v. Robert Half Int'l., Inc.</u>	
(2016) 1 Cal.5th 480.....	7
<u>Lane v. Facebook, Inc.</u>	
(9th Cir. 2012) 696 F.3d 811	16
<u>North County Contractors Ass'n, Inc. v. Touchstone Ins. Servs.</u>	
(1994) 27 Cal.App.4th 1085.....	9

1	<u>Potter v. Pacific Coast Lumber Co.</u>	
2	(1951) 37 Cal.2d 592.....	8
3	<u>Rodriguez v. W Publ'g Corp.</u>	
4	(9th Cir. 2009) 563 F.3d 948.....	6
5	<u>Slavkov v. First Water Heater Partners I</u>	
6	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	15
7	<u>Staton v. Boeing</u>	
8	(9th Cir. 2003) 327 F.3d 938.....	6
9	<u>In re Taco Bell Wage and Hour Actions</u>	
10	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	15
11	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
12	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	15
13	<u>In re Warner Communications Sec. Litig.</u>	
14	(S.D.N.Y. 1985) 618 F.Supp. 735	7
15	<u>Wershba v. Apple Computer, Inc.</u>	
16	(2001) 91 Cal.App.4th 224.....	7, 8, 9, 16
17	<u>White v. Experian Information Solutions, Inc.</u>	
18	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	17
19	<u>White v. Starbucks Corp.,</u>	
20	497 F.Supp.2d 1080 (N.D. Cal. 2007) . [Saunders Decl.].....	13
21	<u>Williams v. Superior Court</u>	
22	(2013) 221 Cal.App.4th 1353.....	10

1	Statutes	
2	Cal. Rule of Court. 3.769	8
3	Cal. Rule of Court 3.769(c)	9
4	Cal. Rules of Court 3.769(f) and 3.766(d)	5
5	California Labor Code section 226	2, 14
6	Code of Civil Procedure § 382	10
7	Labor Code § 201	14
8	Labor Code § 203	15
9	Labor Code § 2699(e)(2)	15
10	Labor Code § 2802	14
11	Local Rule 2.99.05	1
12		
13	Other Authorities	
14	<u>Managing Class Action Litigation: A Pocket Guide for Judges</u> (3d ed. 2010),	
15	available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf	17
16	<u>Newberg on Class Actions</u> (3d ed.) § 14.03	7
17	<u>Newberg on Class Actions</u> (4th ed. 2002) § 11.41	8
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Pursuant to Local Rule 2.99.05, Plaintiffs Jared Deaver, Brad Smith, and Daniel Ramirez
3 hereby move the Court for an order granting preliminary approval to a proposed non-reversionary
4 class action settlement to resolve wage and hour claims on behalf of approximately 2,392
5 individuals employed by Defendant Blue Diamond Growers (“Blue Diamond” or “Defendant”) as
6 non-exempt employees in California at any time within the Class Period of July 14, 2017 through
7 August 23, 2024. The proposed \$5,093,537.50 settlement will provide about \$2,977,799.38 in
8 cash payments to the class, with an average award currently estimated at about \$1,245. The
9 balance of approximately \$2,165,738.13 will cover reasonable attorney’s fees and actual litigation
10 costs, settlement administration costs, civil penalties under PAGA, and an enhancement award to
11 each Plaintiff. The settlement is the product of Plaintiffs’ pre-filing investigation, formal
12 discovery and a pre-mediation exchange of information, and arms-length negotiations overseen by
13 experienced mediator the Hon. Daniel J. Buckley, (Ret.).

14 The proposed settlement is within the “range of reasonableness” for approval and
15 Plaintiffs’ counsel submit the settlement is a fair result given the substantial risks inherent in this
16 matter. Accordingly, Plaintiffs request the Court enter an order: (1) granting preliminary approval
17 to the proposed class action settlement; (2) conditionally certifying the settlement class as defined
18 below; (3) appointing Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi &
19 Associates, Bibiyan Law Group, P.C., and Crosner Legal PC as Class Counsel; (4) appointing
20 Plaintiffs Jared Deaver, Brad Smith, and Daniel Ramirez as the Class Representatives;
21 (5) appointing Phoenix Settlement Administrators as the Settlement Administrator; (6) approving
22 the form of notice to the class and the notice procedure; and (7) scheduling a final fairness hearing.

23 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

24 Defendant Blue Diamond is a well-known grower and distributor of almonds and related
25 products, and is a century old agricultural cooperative and a global consumer packaged goods
26 (CPG) company. Defendant is a global operation and has facilities across various cities and states
27 in the United States, including multiple facilities in California. [Declaration of Chad Saunders
28

1 (“Saunders Decl.”), ¶ 4.]

2 Plaintiff Ramirez was a non-exempt hourly employee of Defendant whose duties included,
3 but were in no way limited to, security. Mr. Ramirez worked in Defendant’s Modesto and Salida
4 locations from February 22, 2021, to approximately April 2022. Plaintiff Smith worked for
5 Defendant as a non-exempt employee in Sacramento. He was employed as a forklift driver and
6 worked for Defendant for 13 years until his termination on or around February 5, 2021. In or
7 around April 2019, Mr. Deaver was hired by Defendant as an hourly non-exempt Machine
8 Operator. On or about February 4, 2022, Mr. Deaver’s employment with Defendant ended.
9 [Saunders Decl., ¶ 5.]

10 On July 14, 2021, Mr. Ramirez gave notice to the LWDA and Defendant of Labor Code
11 violations pursuant to PAGA. On July 15, 2021, Mr. Ramirez filed a Class Action Complaint
12 alleging wage and hour violations of the California Labor Code. On October 25, 2021, Mr. Ramirez
13 filed an amended complaint, adding his claims under PAGA. On December 10, 2021, Defendant
14 filed a demurrer to all of Mr. Ramirez’s causes of action, which the Court sustained with leave to
15 amend. On June 22, 2022, Mr. Ramirez filed a Second Amended Complaint addressing the Court’s
16 rulings on the demurrer. On March 16, 2023, Mr. Ramirez filed a Third Amended Complaint,
17 consolidating his action with Mr. Smith’s action.¹ [Saunders Decl., ¶ 6.]

18 On February 28, 2022, Mr. Deaver filed a PAGA notice with the LWDA alleging Defendant
19 failed to provide accurate, itemized wage statements in violation of California Labor Code section
20 226. [Declaration of Edward W. Choi (“Choi Decl.”) ¶ 2, Ex. A.] On March 2, 2022, Mr. Deaver
21 filed a Class Action Complaint, and on May 4, 2022, he filed a separate complaint alleging a single
22 cause of action under PAGA based on the same underlying Labor Code violation. [*Id.* at ¶¶ 3-4.] In
23 2022 and on into early 2023, the Parties in the Deaver Actions engaged in formal written discovery
24 and various related meet and confer efforts. [*Id.* at ¶ 6.] On March 24, 2023, Mr. Deaver and
25 Defendant engaged in private mediation with the Honorable Brian C. Walsh (Ret.), which mediation
26

27 ¹ Plaintiff Smith filed a separate matter on November 2, 2021, which matter was dismissed in
28 April 2023 and Plaintiff Smith added to the Ramirez matter as a named plaintiff.

1 did not result in a settlement. [Saunders Decl., ¶ 7; Choi Decl. at ¶ 7.]

2 On or about October 6, 2023, the *Ramirez Action* and the *Deaver Action* were consolidated.
3 Thereafter, the Parties to all matters agreed to a global mediation. The Parties also agreed on a
4 protocol for an exchange of additional documents and information before the mediation to facilitate
5 the settlement discussions. Consequently, Plaintiffs' counsel reviewed payroll records,
6 compensation plans, personnel policies/handbooks, meal and rest break policies, personnel files,
7 and a random of sampling of Class Member paystubs and time records. Plaintiff then had those
8 records analyzed by consulting experts at Berger Consulting Group to look for, inter alia, violation
9 rates for missed, late and/or short meal breaks, potential damages from unpaid overtime, etc.
10 Defendant also provided data regarding the total number of putative class members, the estimated
11 total amount of workweeks and pay periods they worked, average pay rates, and information
12 regarding other non-hourly compensation, among other relevant data. [Saunders Decl., ¶ 8.]

13 The Parties then engaged the Hon. Daniel J. Buckley (Ret.), a respected professional neutral
14 with substantial wage and hour and class action experience. On May 14, 2024, the Parties
15 participated in a full day mediation with Judge Buckley. Throughout the day, the arms-length
16 negotiations were hard-fought and adversarial as the Parties exchanged extensive information on
17 their legal and factual positions, and made numerous offers and counter-offers, and ultimately
18 reached agreement on all major issues. The Parties then collaboratively drafted the Settlement
19 Agreement and Release ("Settlement Agreement") setting forth the settlement terms now before the
20 Court for approval. [Saunders Decl., ¶ 9.] A fully-executed, true and correct copy of the Settlement
21 Agreement is attached to the Saunders Declaration as Exhibit 1.

22 **III. THE PROPOSED SETTLEMENT TERMS**

23 Under the settlement, Blue Diamond will pay \$5,093,537.50 into a common fund, the
24 Maximum Settlement Amount ("MSA"). Attorney's fees of up to \$1,782,738.13 (35% of the MSA),
25 litigation costs of up to \$80,000, settlement administration costs of no more than \$23,000, a service
26 award to each Plaintiff of no more than \$10,000 (\$30,000 total), and PAGA civil penalties of
27 \$250,000 (of which 75%, or \$187,500 will go to the LWDA and 25%, or \$62,500, will go to the
28 PAGA Members on a pro rata basis), all will be paid from the MSA. The balance of around

1 \$2,977,799.38 will be allocated pro rata to the Class Members based on their weeks worked during
2 the Class Period. No portion of the MSA will revert to Blue Diamond. [Settlement Agreement, ¶¶
3 16, 38, 40; Saunders Decl., ¶ 10.]

4 **A. Certification of the Settlement Class**

5 The settlement provides for conditional certification of a settlement class including all
6 current and former non-exempt California employees employed directly by Blue Diamond who
7 worked at any time during the Class Period of July 14, 2017 through August 23, 2024. The
8 Settlement Class consists of about 2,392 individuals. [Settlement Agreement, ¶¶ 6-7; Saunders
9 Decl., ¶ 11.]

10 **B. The Benefit Conferred on the Settlement Class**

11 As noted, the settlement obligates Blue Diamond to pay \$5,093,537.50 to resolve the
12 Settlement Class's claims, inclusive of attorney's fees and costs. At least \$2,977,799.38 from the
13 MSA will be distributed to the Participating Class Members. This is a cash settlement that does not
14 require Participating Class Members to submit a claim form to receive their settlement share.
15 Participating Class Members will receive their settlement checks automatically via First Class U.S.
16 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
17 percent will be allocated to penalties and interest, which allocation is consistent with Blue
18 Diamond's potential liability. Blue Diamond will pay any and all applicable employer-side payroll
19 taxes separately and in addition to the MSA. Subject to the Court's approval, any amounts not
20 claimed (because a class member does not cash their settlement check) will be forwarded to the
21 State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 12.]

22 Each Participating Class Member will receive a share of the Net Settlement Amount based
23 on his or her total pay periods worked in California as a non-exempt employee during the Class
24 Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
25 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
26 missed meal and rest breaks, and potential statutory penalties under applicable law. These methods
27 are intended to ensure each Class Member receives a settlement award corresponding to the relative
28 value of their potential claims. The proposed allocation provides a reasonable way to compensate

1 Class Members based on the amount of time they worked for Blue Diamond in California and the
2 amount unpaid/underpaid overtime, the number of missed or non-compliant meal breaks and rest
3 breaks, etc. The average class award is estimated to be around \$1,245, based on approximately \$6.97
4 per work week, and the average PAGA award is estimated at about \$32, based on approximately
5 \$0.25 per pay period. [Saunders Decl., ¶ 13.]

6 **C. Settlement Administration**

7 Subject to the Court's approval, the Parties have agreed on Phoenix Settlement
8 Administrators ("Phoenix") as the Settlement Administrator. Phoenix is qualified and has
9 significant experience administering class action settlements, including numerous wage and hour
10 matters. Phoenix's fees and costs will not exceed \$23,000. If the Court approves less than the above
11 amount, the difference will remain in the Net Settlement Amount for distribution to the Participating
12 Class Members. [Saunders Decl., ¶ 14; Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-C.]

13 **D. The Class Notice**

14 The proposed Notice of Class Action Settlement (Exhibit A to the Settlement Agreement)
15 sets out information about this case and explains the basic settlement terms in plain language. The
16 proposed Class Notice will be available in Urdu, Punjabi, Fari and Mandarin. The Notice also sets
17 forth the individualized information used to calculate Class Members' Individual Settlement
18 Payments and each Class Member's estimated settlement award. The Notice likewise details the
19 procedures for Class Members to dispute their individual information, the procedure for
20 submitting an objection to the Settlement, the procedure to request exclusion, and the fact that any
21 final judgment will bind all class members who do not opt out. Cal. Rules of Court 3.769(f) and
22 3.766(d). In sum, the Notice provides the Class Members with the information necessary to
23 evaluate the Settlement and decide to participate in, opt out of, or object to the proposed
24 Settlement, and meets all requirements imposed by the California Rules of Court. Coupled with
25 the notice procedure, the Notice provides the best notice practicable. [Saunders Decl., ¶ 15.]

26 **E. Right to Correct Information, Opt Out, or Object**

27 Class Members will have forty-five (45) days to dispute the information in their Notice
28 used to calculate their settlement award, and also have 45 days to submit any objections to the

1 settlement or to request exclusion. [Settlement Agreement, ¶¶ 58, 60 and 61.] If a Class Member
2 disputes their individual information, the Settlement Administrator will review the Class
3 Member's records and any other information submitted, and make a final determination. PAGA
4 Members may not opt out or otherwise exclude himself or herself from the release of PAGA
5 claims. [Saunders Decl., ¶ 16.]

6 **F. Release of Claims**

7 All Participating Class Members will release Blue Diamond from all claims alleged in the
8 operative complaint, or that could have been brought based on the factual allegations in the
9 complaint during the Class Period. The release is limited to the claims that were actually pleaded
10 or could have been pleaded based on the alleged facts in the complaint. [Settlement Agreement,
11 ¶ 29; Saunders Decl., ¶ 17.]

12 **G. Plaintiffs' Enhancement Awards**

13 A modest incentive award for each Plaintiff is appropriate under applicable law. See Staton
14 v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
15 and incentive payments ranging from \$2,000 to \$25,000). They devoted time and resources to the
16 litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in
17 preparing for the mediations. The service payments provided to Plaintiffs as the class representatives
18 is typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563
19 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done
20 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
21 and, sometimes, to recognize their willingness to act as a private attorney general."). Defendant will
22 not oppose a request for an enhancement award to Plaintiffs of not more than \$10,000.00 each in
23 recognition of their time spent on this matter, the risks they undertook on behalf of the class, and
24 the benefit conferred to the class, as addressed in their respective declarations filed herewith. If the
25 Court approves less than the above amounts, the difference will remain in the Net Settlement
26 Amount for distribution to the Participating Class Members. [Saunders Decl., ¶ 18; Declaration of
27 Jared Deaver, ¶¶ 4-7; Declaration of Brad Smith, ¶¶ 2-9.]

28 /////

1 **H. Attorney's Fees and Costs**

2 The terms of the Parties' settlement also allow Plaintiffs' counsel to apply for an award of
3 attorney's fees of up to 35% of the MSA, or \$1,782,738.13 and reimbursement of actual costs and
4 expenses of up to \$80,000.00. In Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;
5 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
6 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260, the California
7 Supreme Court approved calculating attorney's fees using the percentage-of-the-common-
8 fund method in wage-and-hour cases, and further approved an award of 1/3 of the total
9 common fund in that matter. Further, counsel's requested 35% fee is justified in this matter
10 considering the amount of work performed and the excellent result achieved. The percentage
11 requested likewise comports with fee awards calculated on a percentage-of-the-benefit
12 basis as a review of class action settlements shows that courts have historically awarded fees
13 in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
14 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
15 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
16 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
17 reasonable fee award from a common fund in order to assure that the fees do not consume a
18 disproportionate part of the recovery obtained for the class, although somewhat larger
19 percentages are not unprecedented.").

20 Plaintiffs' counsel will submit a request for attorney's fees and actual litigation costs at
21 final approval per the terms of the Settlement Agreement and applicable law, will provide the
22 Court with appropriate information and evidence regarding hourly rates, tasks performed, and time
23 expended on the case, and further argument supporting the fees requested. If the Court approves
24 less than the above amounts, the difference will remain in the Net Settlement Amount for
25 distribution to the Participating Class Members. Pursuant to a previously signed agreement by all
26 Plaintiffs and their counsel, Plaintiffs' Counsel will be splitting the approved fees as follows: 35%
27 to the Bibyian Law Group, P.C.; 35% to Crosner Legal, P.C.; 9.75% to Diversity Law Group;
28 9.75% to the Law Offices of Choi & Associates and 10.5% to the Polaris Law Group [Saunders

Decl., ¶ 19.]

I. PAGA and Notice to the LWDA

As noted, the Parties allocated \$250,000 to resolution of Plaintiffs' alleged claims under PAGA, and respectfully submit that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Consistent with PAGA, \$187,500 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining \$62,500 will be distributed pro rata to eligible PAGA Members. Prior to filing this motion, Plaintiffs provided notice of the proposed settlement of the PAGA claims and the approval hearing to the LWDA. [Saunders Decl., ¶ 21; Exh. 3.]

J. Uncashed Funds

Class Members and PAGA Members have one hundred and eighty (180) days to cash Individual Settlement Payments. Any Settlement checks not cashed after 180 days from the date of mailing of Individual Settlement Payments shall be sent to the State of California Unclaimed Property Fund in the Class Members' or PAGA Members' name. [Settlement Agreement, ¶ 51.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion, and ensures fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs via a two-step process to determine, under all of the circumstances, if the proposed settlement is fair, reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

The first step is a motion for preliminary approval, through which the parties present the

1 court with the proposed settlement and seek a determination that it is sufficiently fair and
2 reasonable to warrant notice to the class and further proceedings as to its fairness and adequacy.
3 Cal. Rule of Court 3.769(c). This preliminary evaluation determines if the proposed settlement is
4 within the “range of reasonableness” and if notice should be provided to the class regarding the
5 settlement’s proposed terms and conditions, and whether a final fairness hearing should be
6 scheduled. Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass’n, Inc. v.
7 Touchstone Ins. Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial
8 policy favoring settlement of class actions, courts generally apply a presumption of fairness to
9 class action settlements when (1) the settlement results from arms-length bargaining, (2)
10 investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3)
11 counsel is experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
12 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

13 If the court grants preliminary approval, it then orders the class be given notice in an
14 appropriate manner, establishes a schedule and procedures for class members to request exclusion
15 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney’s fees
16 and costs is filed subsequent to preliminary approval and heard with the motion for final approval,
17 as part of the second step of the two-step approval process. Dunk, 48 Cal.App.4th at 1800;
18 Wershba, 91 Cal.App.4th at 232. The proposed settlement in this matter warrants preliminary
19 approval under the liberal standard discussed above, as it is fair, reasonable and adequate under all
20 the circumstances, and represents a favorable result for the class.

21 **B. The Proposed Settlement Class Should Be Conditionally Certified**

22 The purpose of conditional class certification for purposes of settlement is to facilitate
23 provision of notice of the proposed settlement’s terms, and the date and time of the final fairness
24 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
25 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v.
26 Superior Court (2003) 113 Cal.App.4th 836, 839 (“[I]t is well established that trial courts should
27 use different standards to determine the propriety of a settlement class.”)

28 In the present matter, conditional certification is proper since this matter satisfies all

1 requirements for class certification under Code of Civil Procedure section 382. First, the class is
2 both sufficiently numerous, consisting of approximately 2,392 individuals, and ascertainable by
3 reference to Defendant’s personnel and payroll records. [Saunders Decl., ¶ 22.] Next, Plaintiffs are
4 adequate class representatives, as their claims do not conflict with and are not antagonistic to the
5 claims of other class members. [Saunders Decl., ¶ 23; Deaver Decl., ¶¶ 3-4; Ramirez Decl., ¶¶ __;
6 Smith Decl., ¶¶ 2-3.] Further, their claims are typical as each is a member of the class and their
7 claims arise from the same employment practices and course of conduct giving rise to the claims of
8 the other class members. [Id.] Lastly, their counsel all are experienced and adequate class counsel.
9 [Saunders Decl., ¶¶ 40-52; Declaration of Christine S. Lee (“C. Lee Declaration”), ¶¶ 8-10;
10 Declaration of Larry W. Lee (“L. Lee Decl.”), ¶¶ 3-6; Choi Decl., ¶¶ 11-13; Declaration of William
11 L. Marder (“Marder Decl.”), ¶¶ 4-10; Declaration of David Bibiyan (“Bibiyan Decl.”), ¶¶ 2-12.]

12 Next, common questions of law and fact predominate – particularly for purposes of a
13 settlement class – as the Class Members all were paid via substantially similar company-wide
14 policies that resulting alleged off the clock work, underpaid overtime, missed/non-compliant meal
15 and rest breaks, etc. Since the focus of the claims against Blue Diamond concerns the legality of
16 common policies applied uniformly to the entire class, common issues predominate over
17 individualized inquiries concerning liability. For instance, Blue Diamond’s compensation scheme
18 either properly paid the class members for overtime hours worked or it did not. Regardless of that
19 determinations, it will decide liability for all Class Members one way or another. [Saunders Decl.,
20 ¶ 24.]

21 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
22 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
23 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
24 consistently applied to a group of employees is in violation of the wage and hour laws are of the
25 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
26 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
27 or law that supports commonality for class certification”). Lastly, a class action is superior to
28 other means for the fair and efficient adjudication of this controversy. [Saunders Decl., ¶ 25.]

1 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is**
2 **within the Range of Reasonableness**

3 The proposed settlement resulted from serious, arms-length negotiations facilitated by
4 respected mediator the Hon. Daniel J. Buckley (Ret.), who has extensive experience mediating wage
5 and hour class actions. [Saunders Decl., ¶ 9.] Plaintiffs' counsel at Diversity Law Group, P.C.,
6 Polaris Law Group, Law Offices of Choi & Associates, Bibiyan Law Group, P.C., and Crosner
7 Legal PC, all have years of litigation experience, including litigating wage and hour class actions.
8 Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation
9 or settling the matter. [[Saunders Decl., ¶¶ 40-52; Choi Decl. ¶¶ 11-13; L. Lee, ¶¶ 3-6; C. Lee Decl.,
10 ¶¶ 8-10; Marder Decl., ¶¶ 4-10; Bibiyan Decl., ¶¶ 2-12.]

11 California law recognizes several factors bearing on the fairness, adequacy, and
12 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
13 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)
14 the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further
15 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views
16 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
17 below, the proposed settlement satisfies these requirements.

18 Prior to mediation, the parties engaged in extensive formal informal discovery to facilitate
19 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Blue
20 Diamond's payroll practices, pay stubs and time records for a sampling of class members, meal and
21 rest break policies, etc., and information from Defendant regarding class size and breakdown of job
22 positions, work weeks, rates of pay, and other information used to formulate a damages model. This
23 extensive information then was analyzed by a consulting expert to look for meal and rest break
24 violation rates, time spent working off the clock, etc., and other issues relevant to liability and
25 damages. Plaintiffs' counsel are confident they obtained sufficient information to enable them to
26 understand the law and facts of this case and make an informed decision regarding the proposed
27 settlement and whether it is in the best interests of the class. [Saunders Decl., ¶¶ 8, 26.]

28 Using that data, Plaintiff ran various calculations and estimated Blue Diamond's likely

1 maximum exposure on the class claims at approximately \$77,369,080, including about \$2,146,415
2 on the off the clock/unpaid wage claims, around \$341,460 on the regular rate claims,
3 approximately \$12,493,475 on the meal period claims, about \$47,568,280 on the rest period
4 claims, about \$2,135,520 on the expense reimbursement claims, around \$6,884,000 on the wage
5 statement claims, and \$5,799,930 on the waiting time penalty claims. [Saunders Decl., ¶¶ 27-28.]
6 Plaintiffs and counsel substantially discounted the value of these claims, however, in light of
7 Defendant’s multi-layered defenses on both class certification and on the merits, and the multiple
8 and considerable risks posed by proceeding with the litigation.

9 The unpaid wage claims focus primarily on Blue Diamond’s alleged failure to pay Class
10 Members at least minimum wages and/ or overtime wages for all of their hours worked. Plaintiffs
11 allege, for example, they regularly performed pre-shift and post-shift work off the clock, such as
12 unlocking gates and doors of the building they were working in, being asked by supervisors to
13 check on various projects and areas in the production zone, etc. all before clocking in. Plaintiffs
14 also claim employees would wait in line to clock in/out partly because of the sheer volume of
15 employees clocking in at the same time, as well as having to perform a long “attestation process”²
16 when clocking in or out, before their time punch would be accepted by the time-keeping system.
17 Per Plaintiffs, all of this pre- and post-shift off the clock work resulted in the loss of several
18 minutes of compensable time per shift. [Saunders Decl., ¶ 29.]

19 Plaintiffs also allege Defendants failed to incorporate all forms of compensation into their
20 regular rate of pay calculations when paying overtime as required by Alvarado v. Dart Container
21 Corp. (2018) 4 Cal.5th 542 (the “regular rate of pay, which can change from pay period to pay
22 period, includes adjustments to the straight time rate, reflecting, among other things, shift
23 differentials and the per-hour value of any non-hourly compensation the employee has earned.”)
24 Here, Plaintiffs allege class members regularly received various non-discretionary bonuses and
25 other payments and that Blue Diamond failed to pay the required overtime on those payments. For
26

27 ² For example, when clocking out, employees would be asked whether they took a rest break and
28 meal break, and would have to choose one of 18 different scenarios regarding their breaks.

1 the same reasons, Plaintiffs also allege Blue Diamond underpaid employees for their vacation
2 time. [Saunders Decl., ¶ 30.]

3 In response, Blue Diamond argued its payroll policies are fully compliant, that it properly
4 tracked and paid for all hours worked at the appropriate hourly wage. Defendant also argued that,
5 if any class members failed to record and report time it was in violation of company policy and
6 would have occurred on a haphazard and individual basis. Accordingly Defendant argued the issue
7 would not be certifiable since it would require individualized inquiries whether any compensable
8 “off the clock” work occurred and why it was or was not documented and paid for. White v.
9 Starbucks Corp., 497 F.Supp.2d 1080, 1083 (N.D. Cal. 2007) (employer must have actual or
10 constructive knowledge of the off the clock work for liability to attach). [Saunders Decl., ¶ 31.]

11 On the meal and rest break claims, Plaintiffs contend Blue Diamond’s written policies are
12 not fully compliant, and regardless the time and pay records show substantial “de facto” violations
13 for non-compliant meal breaks. For example, Plaintiffs’ argued Defendant’s own records show
14 large numbers of missed first and second meal periods, as well as untimely meal periods that
15 started after the fifth hour of work. Plaintiffs additionally allege their meal breaks frequently were
16 interrupted by supervisors, and that their lunches effectively were cut short because they had to get
17 in line to clock out well before the end of their 30 minute break. Overall, Plaintiffs allege their
18 expert’s analysis showed over 500,000 shifts with a unique meal period violation. [Saunders
19 Decl., ¶ 32.]

20 In response, Blue Diamond argued its written policies are fully compliant, particularly and
21 that it provided employees with the opportunity to receive all required meal breaks and thereby
22 met its obligations under the Labor Code and applicable Wage Order. Further, Defendant argued
23 to the extent employees missed a break or took a non-compliant break, any such discrepancies
24 were aberrational and against company policy and a myriad of individual issues would be required
25 to determine whether the potential violation resulted from employee choice or some other reason.
26 Consequently, per Defendant, individualized inquiries would dominate on this issue and render
27 class certification of the meal break claim inappropriate. Defendant also emphasized it paid
28 thousands of dollars in meal period premiums for documented violations and per its compliant

1 policies. [Saunders Decl., ¶ 33.]

2 For rest breaks, Plaintiffs again argued that there were numerous “de facto” violations
3 where class members didn’t receive a break (especially third breaks), or didn’t receive a compliant
4 break/had their breaks interrupted by supervisors. As with meal breaks, Defendant argued the
5 applicable rest break policies complied with California law, and that it authorized and permitted
6 employees to take all required breaks. Defendant further contended that, in light of the fact that it
7 is not required to maintain a record of rest periods, any evidence of failure to authorize rest
8 periods and/or discouragement from taking rest periods would be purely anecdotal and individual
9 issues would predominate on liability. This arguably would once again make class certification
10 and a trial unmanageable since the number of instances an employee missed a rest break, or had a
11 break interrupted, would have to be tested on a case by case basis to determine compliance.

12 [Saunders Decl., ¶ 34.]

13 Plaintiffs also allege they had to use their personal cell phones for work purposes without
14 any reimbursement. As such, employees are entitled to unreimbursed costs for the use of their cell
15 phones. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137. Defendant on
16 the other hand argued that any use of personal mobile devices was unnecessary to perform the job
17 and therefore was purely for personal convenience. If so, then the expense was neither reasonable
18 nor necessary, and no reimbursement was required. Labor Code § 2802. [Saunders Decl., ¶ 35.]

19 The claims under Labor Code section 226 allege that Defendant’s wage statements
20 improperly list redundant hours worked, such that an employee cannot simply add the hours listed
21 on the wage statement and arrive at the correct total. For instance, Defendant’s wage statements
22 might include a listing for 40 hours of “Swing Shift Differential” wages **that are** redundant of
23 other hours worked. Since wage statements did not provide a total hours worked figure, if an
24 employee added up the hours listed then he or she would arrive at the incorrect total. Plaintiffs
25 also allege derivate violations of Labor Code section 226 as well derivative violations of Labor
26 Code sections 201, *et seq.*, which claims are subject to the same risks and uncertainties plus
27 additional risks posed by the need to take into account the discretionary nature of such awards and
28 the “good faith” and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008)

1 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code §
2 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while
3 these claims largely are derivative of the unpaid wage claim, they also are subject to additional
4 defenses. [Saunders Decl., ¶ 36.]

5 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
6 entitled to penalties totaling around \$76 million in civil penalties should Plaintiffs prevail on all
7 claims and establish violations of the multiple Labor Code sections for every single pay period at
8 issue, and recover the maximum allowable penalties. [Saunders Decl., ¶ 37.] As with the class
9 claims, Plaintiffs discounted the potential PAGA penalties based on Defendant's various defenses
10 on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to
11 decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30
12 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period after a bench trial, which
13 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
14 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).

15 Accordingly, the Parties allocated \$250,000 to PAGA penalties, and Plaintiffs submit this
16 amount is reasonable under the circumstances and in line with comparable settlements in other wage
17 and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug.
18 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty from
19 \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I
20 (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500 PAGA payment
21 reasonable when measured against the overall settlement of \$345,000 and the possible weaknesses
22 in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of
23 the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings
24 v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving
25 settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement
26 agreement to the LWDA, and the LWDA has not objected to the settlement.

27 The settlement obviates the significant risk that this Court may find any kind of class or
28 representative resolution unachievable or deny certification of all or some of Plaintiffs' claims.

1 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
2 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable
3 motion to decertify, as well as trial and possible appeals, and would further and substantially delay
4 any recovery by the class with no assurance of recovering significantly more than the proposed
5 settlement. While Plaintiffs are confident in the merits of these claims, legitimate controversies
6 exist regarding each one of them. Plaintiffs also recognize proving the amount of wages and
7 penalties due each Class Member would be an expensive, time-consuming, and uncertain
8 proposition. [Saunders Decl., ¶¶ 38-39.]

9 Plaintiffs and counsel discounted the value of the class claims consistent with the risks
10 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
11 benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very real and
12 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
13 was in the best interests of the class, and the overall \$5,093,537.50 recovery represents a
14 significant percentage of Defendant’s potential exposure. Given these risks, a total recovery for
15 the class of \$5,093,537.50, which will result in average award of some \$1,250 per class member,
16 is a significant result well within the range of reasonableness considering all potential outcomes,
17 and it will provide direct monetary awards to all Class Members without further delay. [Saunders
18 Decl., ¶ 39.]

19 Importantly, the mere fact that a settlement does not provide the same recovery as might be
20 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
21 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
22 settlement process...even if the relief afforded by the proposed settlement is substantially
23 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
24 settlement because the public interest may indeed be served by a voluntary settlement in which
25 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
26 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
27 different from the question whether the settlement is perfect in the estimation of the reviewing
28 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,

1 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
2 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
3 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
4 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
5 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
6 is non-reversionary and will provide timely benefits to the Class Members without a claims
7 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
8 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
9 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
10 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
11 within the “range of reasonableness,” and is fair and adequate for the Class.

12 **V. CONCLUSION**

13 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion,
14 conditionally certify the settlement class, grant preliminary approval to the proposed class action
15 settlement, and enter the [Proposed] Order filed herewith.

16
17 DATED: January 8, 2025

CROSNER LEGAL, P.C.
BIBIYAN LAW GROUP, P.C.
DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP
LAW OFFICES OF CHOI & ASSOCIATES

21 By: 
22 Chad Saunders
23 Attorneys for Plaintiffs
24
25
26
27
28