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17 Attorneys for Plaintiff, Samuel Nudelman

18 SUPERIOR COURT OF CALIFORNIA

19 COUNTY OF SAN JOAQUIN

20 SAMUEL NUDELMAN, on behalf of himself
21 and all others similarly situated and the general
22 public,

23 Plaintiff,

24 v.

25 HEARTLAND STEEL PRODUCTS WEST
26 LLC, a California Limited Liability Company
27 and DOES 1 to 100,

28 Defendants.

) CASE NO. STK-CV-UOE-2022-0003348
) Hon. Jayne Lee
) Dept. 10C
)
) CLASS ACTION
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
) **ACTION AND PAGA SETTLEMENT**
)
) Date: TBD
) Time: 9:00
) Dept.: 10C
)
) Action filed: May 4, 2022
)

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1 This Memorandum is submitted in support of Plaintiff Samuel Nudelman's ("Plaintiff")
2 Motion for Preliminary Approval of Class Action and PAGA Settlement. The proposed non-
3 reversionary settlement in the gross sum of One Million Thirty-Two Thousand Five Hundred and
4 Zero Cents (\$1,032,500.00) is on behalf of approximately 239 class members except as to any
5 Class Members who elect to exclude themselves ("opt-out") from the settlement Class.

6 **INTRODUCTION**

7 Plaintiff filed his original Complaint on May 4, 2022, against Heartland Steel Products
8 West, LLC (hereinafter referred to as "Defendant" or "HSP"), as a class and representative Private
9 Attorneys General Act ("PAGA") action, seeking recovery of unpaid wages and penalties under
10 Business and Professions Code ("B&PC") §17200, et seq., and Labor Code §§ 203, 210, 226,
11 226.7, 510, 558, 1194, 1197.1, 1198, 2698, 2699, and 2802. Plaintiff, on behalf of himself and all
12 other hourly non-exempt employees of Defendant, seeks damages for alleged violation of the
13 Labor Code and restitution for Defendant's alleged violations of B&PC §17200, et seq. Shortly
14 after, Plaintiff served class certification discovery. Thereafter, the parties met and conferred and
15 agreed to stay this action so the parties could work toward informal resolution. The Court entered
16 the stipulated order to stay the action on September 23, 2022. Thereafter, the parties engaged in
17 informal discovery, hired experts to provide damage exposure and engaged the skills of a heavily
sought-after mediator, Mark Rudy.

18 On May 25, 2023, Plaintiff and Defendant (the "Parties") participated in an all-day
19 mediation presided over by Mark Rudy, which led to the Class Action and PAGA Settlement
20 Agreement; a true and correct copy of which is attached to the Declaration of Janelle Carney as
21 **Exhibit 1.**

22 Class Counsel have concluded, after taking into account sharply disputed factual and legal
23 issues involved in this litigation and the risks attending further prosecution, that the substantial
24 settlement to be received pursuant to the compromise and settlement of the litigation is in the best
25 interest of the Class Members. Plaintiff recognizes the expense and length of continued
26 proceedings necessary to continue the litigation against Defendant through trial and through any
27 possible appeals. Plaintiff has also taken into account the uncertainty and risk of denial of a motion
28 for class certification, the challenges of seeking PAGA relief for all PAGA Representative Action

Members, the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing damages for the Plaintiff and Class Members.

I. THE CLASS REPRESENTED

The Settlement Class consists of the following:

All non-exempt hourly employees who worked for Defendant in California at least one (1) day at any time from May 4, 2018 through August 23, 2023.

II. THE TWO-STEP APPROVAL PROCESS

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

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

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of reasonableness for acceptable settlements. As Professor Newberg commented, "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing." Newberg on Class Actions, 3rd Ed., 11.26.

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

When the Parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the

1 court for preliminary approval. The stipulation should set forth the central
2 terms of the agreement, including but not limited to, the amount of the
3 settlement, form of payment, manner of determining the effective date of
4 settlement, and any recapture clause.

5 While the details of the recovery for each Class Member are set forth in the proposed
6 Settlement Agreement filed concurrently herewith and attached to the Declaration of Janelle
7 Carney in support of Preliminary Approval, the settlement for each participating Class Member and
8 PAGA Representative Action Member is fair, reasonable, and adequate, given the inherent risk of
9 litigation, the risk relative to class certification, and the costs of litigation. (**Declaration of Janelle
10 Carney ¶7-8**) As explained below, the gross settlement share for each Class Member is \$4,320.00
11 (\$1,032,500.00 / 239 employees).

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

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

- 17 A. Strength of Plaintiff's case;
- 18 B. The risk, expense, complexity and likely duration of further litigation;
- 19 C. The risk of maintaining class action status through trial;
- 20 D. With respect to the amount of the settlement, the number of "cents on the
21 dollar" or percentage of total damages the settlement represents; and
- 22 E. Presence (or lack thereof) of a governmental participant.

23 Further, the Court must take into consideration the additional Kullar factor which is "the
24 most important factor is the strength of the case for the plaintiffs on the merits, balanced against the
25 amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. 168 Cal. App 4th 116, 118) (*See*
26 **Carney Decl., ¶8**) Plaintiff contends the settlement represents approximately 52% of the
27 reasonable value of all claims. (**Carney Decl. ¶8**). The settlement is for a maximum amount of
28 \$1,032,500.00 for approximately 239 class member employees. (**Carney Decl. ¶2**). Plaintiff
asserts that this is an excellent settlement for each class member and PAGA Representative Action
member.

1 The distribution of payment to the Participating Class Members and PAGA Representative
2 Action members will occur as set forth in ¶ G of the Settlement Agreement. Further, each
3 settlement Class Member must cash his or her individual settlement payment check within 180
4 calendar days after it is mailed to him or her. Any checks that remain uncashed will then be
5 transmitted to the State of California State Controller's Office Unclaimed Property Fund, in the
6 Qualified Settlement Class Member's name to be held as unclaimed property for the Qualified
7 Settlement Class Member. In such event, the Qualified Settlement Class Member will nevertheless
8 remain bound by the Settlement Agreement and the releases contained herein. (**Carney Decl, Exh.**
9 **1: Settlement Agreement, ¶ G**)

10 The settlement amount balanced against the merits of the Plaintiff's case is strong as all
11 factors listed supra are discussed in detail consistent **Declaration of Janelle Carney (Carney**
12 **Decl. ¶8)**, filed concurrently herewith.

13 **III. THE PRESUMPTION OF FAIRNESS**

14 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
15 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
16 conducted in good faith. Newberg, §11.51; In re Chicken Antitrust Litigation, 560 F.Supp 957, 962
17 (N.D. Ga. 1980); Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989); Mars Steel Corp. v.
18 Continental Illinois National Bank and Trust Co., 834 F.2d 677, 682 (7th Cir. 1987). Courts do not
19 substitute their judgment for that of the proponents, particularly where, as here, settlement has been
20 reached with the participation of experienced counsel familiar with the litigation. Hammon v.
21 Barry, 752 F.Supp 1087 (D.D.C. 1990); Steinberg v. Carey, 470 F.Supp. 471 (S.D.N.Y. 1979); In
22 re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979), *aff'd in part, rev'd in part in*
23 *645 F.2d 488 (5th Cir. 1981); Sommers v. Abraham Lincoln Federal Savings & Loan Association,*
79 F.R.D. 571 (E.D. Pa. 1978).

24 While the recommendations of counsel proposing the settlement are not conclusive, the
25 Court can properly take them into account, particularly where, they have been involved in litigation
26 for some period of time, appear to be competent, have experience with this type of litigation, and
27 have obtained substantial evidence from the opposing party. See Newberg, §11.47. Here, the two
28 (2) Plaintiff firms involved in this action have a great deal of experience in wage and hour class

1 action litigation. Janelle Carney of Janelle Carney – Attorney at Law, APC has been approved as
2 Class Counsel in over 300 wage and hour class actions. Emanuel M. Starr, Theodore Tang, and
3 Adam Rose of Frontier Law Center have been approved as Class Counsel in several matters over
4 the years. A sampling of such cases is listed in the concurrently filed declarations of Janelle Carney
5 and Theodore Tang. Class Counsel and the Plaintiff have been actively engaged in resolving this
6 matter, hiring a well-respected mediator at considerable cost, as well as hiring an expert to assist
7 with the analysis of the time and pay records produced by Defendant for mediation.

8 The settlement amount is fair and reasonable based on a review of all objective evidence.
9 The Parties’ assessment of the matter is based on extensive research before and during the
10 litigation, and written exchange of information and documents.

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

12 **A. Class Member Compensation**

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

15 Qualified Class Members shall be those Settlement Class Members who will receive a share
16 of the Net Settlement Amount. The Settlement Payment to each of the Qualified Class Members
17 shall be determined based on the number of Qualifying Workweeks during which that Qualified
18 Class Member was employed and worked in California during the *Nudelman* Settlement Class
19 Period. The Net Settlement Amount shall be divided by the total number of Qualifying
20 Workweeks for all Qualified Class Members while employed in California during the *Nudelman*
21 Settlement Class Period. The result of this division shall yield a Settlement Payment Rate (“SPR”).
22 The gross amount of each Qualified Class Member’s Settlement Payment shall be calculated by
23 multiplying the number of Qualifying Workweeks the Qualified Class Member was employed and
24 worked in California during the *Nudelman* Class Period by the SPR. Governmentally required
25 employee tax withholdings shall be deducted from that portion of each Settlement Payment
26 allocated as wages.

27 In calculating Settlement Payments for each Qualified Class Member, Defendant’s records
28 and reasonable calculation regarding Qualifying Workweeks of Class Members shall be deemed
presumptively valid, subject to challenge by the Qualified Class Member with supporting

1 documentation or otherwise. Defendant shall research any challenged discrepancy and proffer
2 evidence to rebut it, if appropriate. The Parties shall attempt to resolve amongst themselves any
3 challenges to Qualifying Workweek calculations, and the Court shall make a final determination if
4 the Parties cannot agree to a resolution.

5 Individual settlement payments to Qualified Class Members shall be allocated 20% as
6 wages, to be reported on an IRS Form W-2, and 80% as penalties and interest (split evenly), to be
7 reported on an IRS Form 1099. Qualified Settlement Class Members shall be responsible for the
8 proper payment of the employee's taxes on all Settlement Payments and any tax withholding and
9 deductions shall be deducted from any settlement payments hereunder as required by law and paid
10 from the Net Settlement Amount.

11 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$50,000.00 to
12 be paid from the Gross Settlement Amount, with 75% (\$37,500.00) allocated to the LWDA PAGA
13 Payment and 25% (\$12,500.00) allocated to PAGA Representative Aggrieved Employees. Plaintiff
14 uploaded the Settlement Agreement to the LWDA on September 15, 2023. (**Carney Decl., Exh. 4**)
15 Notice of Motion, the Memorandum of Points and Authorities, and the declarations in support of
16 the proposed settlement to the LWDA, pursuant to Labor Code § 2699 (l)(2). Plaintiff will upload
in conjunction with filing this motion. (**Carney Decl. ¶16**)

17 Each Class Member will receive a notice that details their estimated claim amount based on
18 the number of Qualifying Workweeks worked during the applicable time period. In this case, Class
19 Members who do not opt out will receive an Individual Settlement Share.

20 In addition to the settlement sums paid to Participating Class Members, the named Plaintiff,
21 Samuel Nudelman, will request a Class Representative Enhancement of Seven Thousand Five
22 Hundred Dollars (\$7,500.00) for his role as a class representative. The Class Representative
23 Enhancement also includes Plaintiff's execution of a general release of all claims, known or
24 unknown, pursuant to Civil Code ¶ 1542 (**Carney Decl., Exh. 1: Settlement Agreement ¶ B**).
25 The enhancement takes into consideration the risks, time, effort, and expenses incurred by the
26 named Plaintiff in coming forward to litigate this matter on behalf of all Class Members. It is also
27 intended to compensate Plaintiff for his efforts in protecting the class members' rights. (See
28

1 **Declaration of Samuel Nudelman** filed concurrently herewith.) The settlement achieved is broken
2 down further:

- 3 1) Maximum Settlement Amount: \$1,032,500.00
- 4 2) Attorneys' Fees and Costs: Attorneys' Fees: \$344,167.67
5 (33.33% of the total settlement);
6 Costs not in excess of \$20,000.00, as
7 verified by Class Counsel and approved
8 by the Court;
- 9 3) Class Representative Enhancement: \$7,500.00;
- 10 4) Settlement Administration Costs: Not to exceed \$12,000.00 (maximum
11 amount);
- 12 5) PAGA Payment: \$50,000.00 (\$37,500.00 (75%) to the
13 LWDA and \$12,500.00 (25%) to the
14 aggrieved employees) of \$50,000
15 allocated as PAGA penalties per LC §
16 2649, et seq.); and
- 17 6) Net Settlement Amount: \$611,332.33 to be distributed to the
18 settlement class.

19 Each PAGA Representative Action Member, regardless of whether he or she timely
20 requests to opt-out of the class action portion of the Settlement (i.e., the Released Class Claims),
21 will receive a portion of the PAGA Settlement Share allocated on a per capita basis. Individual
22 PAGA Settlement Shares are calculated by dividing 25 percent of the PAGA Payment (\$12,500.00)
23 by the total number of PAGA Representative Class Members.

24 At the very least, the Net Settlement Amount (NSA) will be \$611,332.33. The NSA is
25 based on the court approving all the requested amounts listed above. To the extent any request is
26 not approved, the Net Settlement Amount will increase accordingly. With an NSA of
27 approximately \$606,332.33, each Class Member will receive an individual settlement share that is
28 equal to a pro rata share of the Net Settlement Amount.

Based on a review of its records as of May 25, 2023, Defendant estimates there are 239

1 Class Members who collectively worked a total of approximately 20,650 Workweeks. Based on
2 the number of workweeks and Class Members as of May 25, 2023, the average gross settlement
3 share for each Class Member is \$4,320.00 (\$1,032,500.00 / 239 employees). This is an excellent
4 average settlement share. To the extent that any estimate is less than stated, the actual numbers
5 will be used to determine the Net Settlement Amount. Fairness of the settlement is further
6 demonstrated by risks of non-certification, trial or appeal. It is extremely unlikely that the majority
7 of the current employees in the Class could or would maintain individual actions against
8 Defendant.

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

10 Non-settling parties or third parties sometimes attempt to object to settlements, but the right
11 of non-settling parties to object even at the final settlement approval hearing, let alone the
12 preliminary approval hearing, is quite limited. Generally, only Class Members have standing to
13 object to a proposed settlement. “Beginning from the unassailable premise that settlements are to
14 be encouraged, it follows that to routinely allow non-Class Members to inject their concerns via
15 objection at the settlement stage would tend to frustrate this goal.” Gould v. Alleco, Inc., 883 F.2d
16 281, 284 (4th Cir. 1989).

17 As Newberg observed, even non-settling defendants in a multiple-defendant litigation
18 context have no standing to object to the fairness or adequacy of the settlement by other
19 defendants; they are limited to objecting to any terms that would preclude them from seeking
20 indemnification from the settling defendants. Newberg at §11.55.

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

22 The Parties have finalized a formal Settlement Agreement. The Parties are filing all
23 settlement and notice documents with this Motion for Preliminary Approval of Class Action and
24 PAGA Settlement: (1) Stipulation of Settlement and Release (“Settlement Agreement”) (see
25 **Exhibit 1** to the **Decl. Carney**); because this is a non-reversionary settlement, upon the expiration
26 of the Objection period, Participating Class Members will receive one (1) check for their settlement
27 amount based on the formulas listed supra. Each PAGA Representative Action Member,
28 regardless of whether he or she timely requests to opt-out of the class action portion of the
Settlement (i.e., the Released Class Claims), will receive a portion of the PAGA Settlement Share

1 allocated on a per capita basis. The Participating Class Members do not have to submit a claim
2 form in order to receive their share of the Settlement. The Parties respectfully request that this
3 Court approve the Notice (attached to the **Settlement Agreement** as **Exhibit 1**) to be disseminated
4 to the Class Members consistent with the manner and timing as set forth in this Memorandum and
5 in the Settlement Agreement.

6 The Parties have agreed to retain Rust Consulting, Inc. ("Rust"), as the Settlement
7 Administrator to perform the notice and other claims administration functions set forth within the
8 Settlement Agreement. (Rust's qualifications and estimate are attached as **Exhibits 2-3** to the **Decl.**
9 **Carney ¶ 14-15**). The current estimate of Rust is in the amount of \$11,376.00. Any amount less
10 than the estimated amount to administer will be returned to the Net Settlement Amount for
11 distribution to Participating Class Members.

12 **VII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON**
13 **OBJECTIVE EVIDENCE**

14 The settlement that has been reached, subject to this Court's approval, is the product of
15 tremendous effort, time, and expense by the Parties and their counsel. The settlement was reached
16 after factual and legal research, informal data exchange, including an analysis of Plaintiff's and all
17 239 Class Members' payroll records, wage statements, and time records, review of hundreds of
18 pages of documents, including Defendant's policies, and one (1) full-day mediation. (**Carney Decl.**
19 **¶ 5,8,10-11**) The settlement amount is, of course, a compromise figure. It also considered the
20 possibility that if a settlement were reached after many months or even years of litigation, the great
21 expenses and attorneys' fees of litigation would cause Defendant to decrease what it was willing to
22 offer. Furthermore, Plaintiff also took into consideration the time delay and financial repercussions
23 in the event of liability trials, numerous damages trials, and appeal by Defendant.

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

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

26 The proposed settlement seeks conditional certification of a settlement class pursuant to
27 Rule of Court 3.769(d). The certification of the class is essential to the settlement. California
28 public policy favors the use of the class action device. Richmond v. Dart Industries (1981) 29 C3d
462, 469. CCP §382 authorizes class suits in California when "the questions is one of the common

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

15 Here, class treatment is warranted for the class for purposes of this Settlement only.
16 Plaintiff contends that evidence of Defendant's policies and procedures with the class member
17 information establish that these claims should be conditionally certified at this time for Settlement
18 only. Plaintiff contends that the evidence consists of payroll records, time records, and pay stubs
19 given to all hourly non-exempt employees.

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

21 For a class to exist, the class description must be sufficiently definite so that it is
22 administratively feasible for the court to determine whether a particular individual is a member of
23 the proposed class by reference to objective criteria. Plaintiff contends that for this settlement, the
24 class definition is sufficiently specific to enable potential class members, and the court, to readily
25 determine the parameters of the class. (See, Clothesrigger, Inc. v. GTE Corp., (1987) 191
26 Cal.App.3d 605, 617.) At approximately 239 class members as of May 25, 2023, this is sufficient
27 to satisfy numerosity requirements.

28 /////

/////

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

2 Plaintiff contends that for purposes of settlement only, that common questions of law and
3 fact predominate. As employers, Defendants are required to pay wages to all their employees in
4 accordance with the Labor Code and IWC Wage Order 16-2001. (See, LC §§1173, 1178.5, 1182;
5 Tidewater Marine Western, Inc. v. Bradshaw (1966) 14 Cal.4th 557, 561-562). As indicated supra,
6 Plaintiff contends that the predominant legal and factual issues in this case are whether the meal
7 and rest period claims break claims through Plaintiff's prism of the case warrants certification for
8 the purposes of settlement. Plaintiff contends that, in assessing whether common issues
9 predominate over individual issues for the purposes of settlement, it is not necessary that the class
10 members' claims or their circumstances be identical. L.A. Fire & Police Protective League, supra,
11 23 Cal.App.3d at 74 (in an overtime action, the fact that there were 19 different subgroups of
12 employees did not preclude finding that common issues predominated.) Plaintiff contends that for
13 the purposes of settlement, California law authorizes class actions when a defendant's corporate
14 policies result in injury to a group of plaintiffs. In Stephens v. Montgomery Ward & Co., Inc.
15 (1987) 193 Cal.App.3d 411, 421 See Sav-On, supra. Plaintiff has objective evidence that Defendant
16 failed to properly pay Plaintiff and employees at their correct regular rate, Plaintiff asserted that he
17 and the class were not provided off-premises meal and rest periods and that Plaintiff was underpaid
18 due to Defendant's rounding practice.

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

19 Plaintiff contends that typicality simply means that the representative's claims are similar to
20 those of class members, and that the interests of the class representative need not be identical to
21 those of other class members; the class representative must simply be similarly situated. B.W.I.
22 Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347; Classen v. Weller
23 (1983) 145 Cal.App.3d 27, 46. According to the Plaintiff, he worked pursuant to Defendant's
24 corporate policies and procedures, which he claims were applicable to all hourly non-exempt
25 employees.

26 **E. Adequacy of Representation**

27 Adequacy of representation depends on whether the named class Plaintiff and the
28 Plaintiff's attorneys qualify to conduct the proposed litigation and whether the named

1 Plaintiff's interests are antagonistic to those of the classes. In this case, Plaintiff contends that the
2 representative Plaintiff's injuries and damages are similar to those of the class he seeks to
3 represent. Plaintiff claims that he has no claims that are antagonistic to the class. (see **Decl.**
4 **Nudelman ¶ 10**). Plaintiff's counsel is experienced and qualified. (**Carney Decl. ¶4; Decl. Tang**
5 **¶¶ 13-14**)

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

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

- | | | |
|----|--|--|
| 9 | 1. Deadline for Defendant to provide Class List to Settlement Administrator and Plaintiff's Counsel: | within twenty-one (21) calendar days of service of Preliminary Approval Order); |
| 10 | | |
| 11 | 2. First Mailing of Notice, etc., to the Class: | within 10 calendar days after Settlement Administrator receives Class List; |
| 12 | | |
| 13 | | |
| 14 | 3. Follow-up mailing to Class (when mail returned): | Within five (5) business days after receipt of returned mail; |
| 15 | | |
| 16 | 4. Objection/Exclusion Deadline Date: | 45 calendar days from the date Notice mailed |
| 17 | | |
| 18 | 5. Filing date for Supplemental Briefs, Attorney's Fees Request and Request for Reimbursement of Costs: | 16 court days prior to Fairness Hearing |
| 19 | | |
| 20 | 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) |
| 21 | | |
| 22 | | |
| 23 | 7. Date for Final Fairness Hearing: | Plaintiff requests a hearing date in at least 75 days after the hearing on preliminary approval (no earlier than January 5, 2024). |
| 24 | | |
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| 28 | | |

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

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

- 5 1. Review and approve the proposed Settlement Agreement.
- 6 2. Conditionally certify for settlement purposes only, a Class consisting of: All non-
7 exempt hourly employees who worked for Defendant in California at least one (1)
8 day at any time from May 4, 2018 through August 23, 2023.
- 9 3. Confirm Janelle of Janelle Carney – Attorney at Law, APC and Emanuel Starr,
10 Theodore Tang, and Adam Rose of Frontier Law Center as Class Counsel; and
11 Samuel Nudelman as Class Representative.
- 12 4. Conditionally approve the PAGA settlement amount of \$50,000.00, subject to
13 obtaining Final Approval of the class action settlement.
- 14 5. Approve an order preliminarily approving the proposed settlement on a class basis,
15 direct notice to be given to the Class, and setting a hearing for final review of the
16 proposed settlement on or about 75 calendar days after the hearing on the motion for
17 preliminary approval; and
- 18 6. Approve Rust Consulting, Inc. as Settlement Administrator to handle the notice
19 procedures as set forth in its proposal. (A true and correct copy of which is attached
20 as **Exhibit 2** to **Decl. Carney**).

21 **CONCLUSION**

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

25 Dated: September 15, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

26
27 By:


Janelle Carney, Attorney for Plaintiff