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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

CRISTO HERNANDEZ, individually and on
behalf of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

ELDORADO NATIONAL (CALIFORNIA),
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

JOSE ARMANDO MATA, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ELDORADO NATIONAL CALIFORNIA,
INC., a subsidiary of the REV GROUP, a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CVRI2201056 (lead)
(consolidated with CVRI2303500)

Honorable Harold W. Hopp
Department 1

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Reservation ID: 555564398993
Date: May 1, 2025
Time: 8:30 a.m.
Dept.: 1

Hernandez Action Filed: March 14, 2022
Hernandez FAC Filed: January 19, 2023
Mata Action Filed: July 10, 2023
Mata FAC Filed: October 9, 2023

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **May 1, 2025 at 8:30 a.m.** in Department **1** of the above-captioned Court located at Riverside Historic Courthouse, 4050 Main Street, Riverside, California 92501, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Cristo Hernandez and Jose Armando Mata's (together, "Plaintiffs") will and hereby do move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendant Eldorado National (California), Inc. ("Defendant").

Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement") attached as Exhibit 3 to the Declaration of Jonathan M. Genish in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement ("Genish Decl.");

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiffs Cristo Hernandez and Jose Armando Mata as the Class Representatives for Settlement purposes;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC and Marcus J. Bradley and Kiley Grombacher of Bradley/Grombacher, LLP as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class Action Settlement ("Class Notice"), Request for Exclusion Form ("Exclusion Form"), and Notice of Objection Form ("Objection Form") attached as Exhibit A, Exhibit B, and Exhibit C, respectively, to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member, directing Defendant to furnish their full name, last known mailing address, Social Security number, dates worked for Defendant during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (if applicable) to the Settlement Administrator within fourteen (14) calendar days after entry of the order granting preliminary approval of the Settlement;

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Plaintiffs Cristo Hernandez (“Plaintiff Hernandez”) and Jose Armando Mata’s (“Plaintiff
4 Mata”) (together, “Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Action and
5 PAGA Settlement (“Settlement” or “Settlement Agreement”) entered into between Plaintiffs and
6 Defendant Eldorado National (California), Inc. (“Defendant”) (collectively, with Plaintiffs, the
7 “Parties”). (Declaration of Jonathan M. Genish in Support of Plaintiffs’ Motion for Preliminary Approval
8 of Class Action and PAGA Settlement [“Genish Decl.”], Exh. 3). The Settlement terms are outlined as
9 follows:

- 10 • Class Size: Approximately eight hundred and sixty-eight (868) individuals.
- 11 • Gross Settlement Amount: Two Million Two Hundred Thousand Dollars and Zero Cents
12 (\$2,200,000.00).
- 13 • Attorneys’ Fees and Costs: Attorneys’ fees of one-third (1/3) of the Gross Settlement Amount
14 (i.e., \$733,333.33 if the Gross Settlement Amount is \$2,200,000.00) plus actual litigation
15 costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents
16 (\$25,000.00), to be paid from the Gross Settlement Amount.
- 17 • Enhancement Payment: Ten Thousand Dollars and Zero Cents (\$10,000.00), to be paid from
18 the Gross Settlement Amount.
- 19 • Settlement Administration Costs: Not to exceed Fourteen Thousand Dollars and Zero Cents
20 (\$14,000.00), to be paid from the Gross Settlement Amount.
- 21 • PAGA Amount: Two Hundred Forty Thousand Dollars and Zero Cents (\$240,000.00) from
22 the Gross Settlement Amount, 75% of which will be paid to the Labor and Workforce
23 Development Agency (“LWDA”) and the remaining 25% to be paid to the PAGA
24 Employees.
- 25 • Estimated Net Settlement Amount One Million One Hundred Seventy-Seven Thousand Six
26 Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,177,666.67) to be distributed to
27 Settlement Class Members.

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1 As set forth herein, the Settlement is the product of informed discovery and arms-length
2 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore
3 respectfully request that the Court grant preliminarily approval of the Settlement, conditionally certify
4 the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), Request for
5 Exclusion Form (“Exclusion Form”), and Notice of Objection Form (“Objection Form”) (collectively,
6 the “Notice Packet”), and set a hearing date for final settlement approval, among other requested relief.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 Defendant is a bus manufacturing company that makes low-floor and standard floor buses for the
9 transit/paratransit, airport, parking, and university transportation markets. Plaintiff Hernandez was
10 employed by Defendant as an hourly-paid, non-exempt Welder from approximately December 2019 to
11 approximately September 2021. (Declaration of Plaintiff Cristo Hernandez in Support of Motion for
12 Preliminary Approval of Class Action and PAGA Settlement [“Hernandez Decl.”], ¶ 2). Plaintiff Mata
13 was employed by Defendant as an hourly-paid, non-exempt Painter from approximately 2021 through
14 January 2023. (Declaration of Plaintiff Jose Armando Mata in Support of Motion for Preliminary
15 Approval of Class Action and PAGA Settlement [“Mata Decl.”], ¶ 5).

16 On March 7, 2022, Plaintiff Hernandez provided written notice to the LWDA by online
17 submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3,
18 of the specified provisions of the California Labor Code alleged to have been violated by Defendant
19 (“Hernandez PAGA Letter”). (Genish Decl., ¶ 8 & Exh. 2).

20 On March 14, 2022, Plaintiff Hernandez filed a Class Action in the action entitled *Cristo*
21 *Hernandez v. Eldorado National (California), Inc.*, Riverside County Superior Court Case No.
22 CVRI2201056 (“Hernandez Action”), thereby commencing a putative class action against Defendant.
23 (*Id.*, ¶ 9).

24 On January 19, 2023, Plaintiff Hernandez filed a First Amended Class Action and Representative
25 Action Complaint (“Hernandez Operative Complaint”), which added a cause of action under PAGA.
26 (*Id.*, ¶ 10). The Hernandez Operative Complaint alleges nine (9) causes of action for violations of the
27 California Labor Code for failure to pay overtime wages, failure to provide compliant meal periods and
28 premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in

1 lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination, failure to
2 provide accurate wage statements, and failure to reimburse necessary business expenses, for violations
3 of California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California
4 Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor
5 Code violations. (Genish Decl., ¶ 10).

6 On March 7, 2023, Plaintiff Hernandez and Defendant participated in a formal mediation
7 conducted by Marc J. Feder, Esq. (“Mediator”), a neutral and respected mediator with extensive
8 experience in complex wage and hour matters, which did not result in a settlement at that time. (*Id.*, ¶
9 11).

10 On March 9, 2023, Plaintiff Hernandez propounded written formal discovery onto Defendant
11 (specifically, Special Interrogatories (Set One)), and served a proposed Belaire-West notice. (*Id.*, ¶ 12).

12 On April 11, 2023, Defendant served responses to Plaintiff Hernandez’s written formal discovery
13 (specifically, Special Interrogatories (Set One)). (*Id.*, ¶ 13).

14 On May 11, 2023, Plaintiff Hernandez propounded written formal discovery onto Defendant
15 (specifically, Form Interrogatories – General (Set One), Requests for Production of Documents (Set One),
16 and Special Interrogatories (Set Two)). (*Id.*, ¶ 14).

17 On May 23, 2023, a Belaire-West notice was mailed in the Hernandez Action to eight hundred
18 and sixty-four (864) putative class members. Seven (7) putative class members timely opted out by the
19 response deadline. (*Id.*, ¶ 15).

20 On July 10, 2023, Plaintiff Mata provided written notice to the LWDA by online submission and
21 to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified
22 provisions of the California Labor Code alleged to have been violated by Defendant (“Mata PAGA
23 Letter”). (Genish Decl., ¶ 16; Declaration of Marcus J. Bradley in Support of Plaintiffs’ Motion for
24 Preliminary Approval of Class Action and PAGA Settlement [“Bradley Decl.”], ¶ 14 & Exh. 1).

25 On July 10, 2023, Plaintiff Mata filed a Class Action Complaint in the action entitled *Jose*
26 *Armando Mata v. Eldorado National California, Inc.*, Riverside County Superior Court Case No.
27 CVRI2303500 (“Mata Action”), thereby commencing a putative class action against Defendant. (Genish
28 Decl., ¶ 16; Bradley Del., ¶ 14).

1 On August 2, 2023, Defendant served responses to Plaintiff Hernandez’s written formal discovery
2 (specifically, Form Interrogatories – General (Set One), Requests for Production of Documents (Set One),
3 and Special Interrogatories (Set Two)), along with a production of documents. (Genish Decl., ¶ 18).

4 On October 9, 2023, Plaintiff Mata filed a First Amended Class Action Complaint (“Mata
5 Operative Complaint”), which added a cause of action under PAGA. (Genish Decl., ¶ 19; Bradley Decl.,
6 ¶ 15). The Mata Operative Complaint alleges twelve (12) causes of action for violations of the California
7 Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide
8 compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods
9 and premiums payments in lieu thereof, failure to provide accurate wage statements, failure to provide
10 employees’ records, failure to adopt standards that minimize excessive indoor heat, failure to provide
11 suitable seating, failure to timely pay wages upon termination, and failure to reimburse necessary
12 business expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based
13 on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on
14 the aforementioned California Labor Code violations. (Genish Decl., ¶ 19; Bradley Decl., ¶¶ 14 & 15).

15 On January 4, 2024, Plaintiff Hernandez propounded written formal discovery onto Defendant
16 (specifically, Requests for Production of Documents (Set Two) and Special Interrogatories (Set Three)).
17 (*Id.*, ¶ 20).

18 On July 24, 2024, Plaintiff Hernandez served a notice of deposition of Defendant’s person most
19 knowledgeable along with a request for production of documents onto Defendant. (*Id.*, ¶ 21).

20 After further negotiations and with the assistance of the Mediator’s evaluations, the Parties were
21 able to reach an agreement to resolve the Hernandez Action and Mata Action (together, the “Actions”)
22 on a class and representative basis. (*Id.*, ¶ 22). The Parties then worked diligently to negotiate and
23 memorialize the terms in a long form settlement agreement. (*Ibid.*).

24 On December 20, 2024, the Parties executed the Settlement Agreement. (*Id.*, ¶ 23 & Exh. 3).

25 On January 21, 2025, pursuant to the joint stipulation of the Parties, the Court entered an Order,
26 which consolidated the Actions and deemed the Hernandez Action lead. (*Id.*, ¶ 24).

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III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former non-exempt employees who worked for Defendant within the State of California at any time during the Class Period, including those individuals who have signed arbitration agreements” (“Class Members” or “Class”). (Genish Decl., ¶ 25; Settlement Agreement, ¶ 6.b). The Class Period is defined as the period from March 14, 2018 through February 29, 2024. (Genish Decl., ¶ 25; Settlement Agreement, ¶ 6.f). Based on information provided by Defendant, it is estimated that there are a total of eight hundred and sixty-eight (868) Class Members. (Genish Decl., ¶ 25).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Hernandez Operative Complaint and Mata Operative Complaint (together, the “Operative Complaints”) for a non-reversionary Gross Settlement Amount of Two Million Two Hundred Thousand Dollars and Zero Cents (\$2,200,000.00), exclusive of employer-side payroll taxes. (Genish Decl., ¶ 26; Settlement Agreement, ¶ 6.r).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Genish Decl., ¶ 26; Settlement Agreement, ¶ 6.r). The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e., \$733,333.33 if the Gross Settlement Amount is \$2,200,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); (3) Settlement Administration Costs, not to exceed Fourteen Thousand Dollars and Zero Cents (\$14,000.00); (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and (5) PAGA Amount in the amount of Two Hundred Forty Thousand Dollars and Zero Cents (\$240,000.00). (Genish Decl., ¶ 26; Settlement Agreement, ¶¶ 6.r, 11, 12, 13, & 14). After the above-estimated amounts are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for Class Members is currently estimated to be One Million One Hundred Seventy-Seven Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,177,666.67). (Genish Decl., ¶ 26). Additionally,

25% of the PAGA Amount (“PAGA Employee Amount”), which is \$60,000.00 out of \$240,000.00 will be fully distributed to all current and former non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period, including those individuals who have signed arbitration agreements (“PAGA Employees”). (Genish Decl., ¶ 27; Settlement Agreement, ¶¶ 6.p, 6.bb, 6.cc, & 13). The “PAGA Period” is defined as the period from March 7, 2021 through February 29, 2024. (Genish Decl., ¶ 27; Settlement Agreement, ¶ 6.dd). Based on information provided by Defendant, it is estimated that there are a total of six hundred eighty-six (686) PAGA Employees. (Genish Decl., ¶ 27).

The Net Settlement Amount will be distributed and paid to all Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis based on the number of weeks each Class Member worked for Defendant as a non-exempt employee in California during the Class Period (“Workweeks”). (Genish Decl., ¶ 28; Settlement Agreement, ¶¶ 6.pp & 6.qq). The *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 28; Settlement Agreement, ¶¶ 6.u & 16).

The PAGA Employee Amount will be distributed and paid to all PAGA Employees on a *pro rata* basis based on the number of pay periods each PAGA Employee worked for Defendant as a non-exempt employee in California during the PAGA Period (“Pay Periods”). (Genish Decl., ¶ 29; Settlement Agreement, ¶¶ 6.ff & 13). The *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in accordance with the Settlement Agreement. (Genish Decl., ¶ 29; Settlement Agreement, ¶¶ 6.s & 17).

Based on Defendant’s representations, the highest Individual Settlement Share is estimated to be Three Thousand Five Hundred Sixteen Dollars and Fifty-Four Cents (\$3,516.54), the average Individual Settlement Share is estimated to be One Thousand Three Hundred Fifty-Six Dollars and Seventy-Six Cents (\$1,356.76), the lowest Individual Settlement Share is estimated to be Eleven Dollars and Thirty-One Cents (\$11.31), the highest Individual PAGA Payment is estimated to be One Hundred Sixty-Four Dollars and Sixty-Seven Cents (\$164.67), the average Individual PAGA Payment is estimated to be

Eighty-Seven Dollars and Forty-Six Cents (\$87.46), and the lowest Individual PAGA Payment is estimated to be Two Dollars and Eleven Cents (\$2.11). (Genish Decl., ¶ 30).

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 18). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 18). The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). (Genish Decl., ¶ 31; Settlement Agreement, ¶¶ 6.t & 18). The employer's share of taxes and contributions in connection with the wages portion of Individual Settlement Shares will be paid by Defendant separately and in addition to the Gross Settlement Amount. (Genish Decl., ¶ 31; Settlement Agreement, ¶¶ 6.r & 18). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Genish Decl., ¶ 31; Settlement Agreement, ¶ 18).

The Settlement Agreement is a non-reversionary and non-claims made settlement. (Genish Decl., ¶ 32; Settlement Agreement, ¶¶ 6.r and 36). The Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement Agreement. (Genish Decl., ¶ 32; Settlement Agreement, ¶¶ 16 & 17). No money will revert to Defendant. (Genish Decl., ¶ 32; Settlement Agreement, ¶ 6.r).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Genish Decl., ¶ 33; Settlement Agreement, ¶ 36). The Settlement Administrator shall mail a reminder postcard by First Class U.S. Mail to any Settlement Class Member and/or PAGA Employee whose Individual Settlement Payment and/or Individual PAGA Payment check has not been negotiated within sixty (60) calendar days after the date of mailing. (Genish Decl., ¶ 33; Settlement Agreement, ¶ 36). Any funds associated with such canceled checks will be distributed by the

1 Settlement Administrator to the State of California’s Unclaimed Property Division in the name of the
2 Settlement Class Member and/or PAGA Employee. (Genish Decl., ¶ 33; Settlement Agreement, ¶ 36).

3 **D. Released Claims**

4 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs and all
5 Settlement Class Members will be deemed to have fully, finally, and forever released, settled,
6 compromised, relinquished, and discharged the Released Parties of all Released Class Claims.
7 (Settlement Agreement, ¶ 37).

8 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs and the State
9 of California with respect to all PAGA Employees will be deemed to have fully, finally, and forever
10 released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA
11 Claims. (*Id.*, ¶ 38).

12 “Released Class Claims” means any and all claims under any federal, state, or local law, which
13 were alleged in the Operative Complaints or which could have been alleged based on the factual
14 allegations in the Operative Complaints, arising during the Class Period, and shall specifically include
15 claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and
16 rest periods and associated premium payments, timely pay wages upon termination, provide accurate
17 wage statements, provide employees’ records, adopt standards that minimize excessive indoor heat,
18 provide suitable seating, and reimburse necessary business-related expenses in violation of California
19 Labor Code Sections 201, 202, 203, 221, 223, 226(a), 226.7, 510, 512(a), 516, 1174, 1182, 1194, 1197,
20 1197.1, 1198, 1198.5, 2800, 2802, and 6720, the applicable Industrial Welfare Commission Wage Orders,
21 and California Business and Professions Code sections 17200-17209. (*Id.*, ¶ 6.ii).

22 “Released PAGA Claims” means any and all claims described in the PAGA Letters and only to
23 the extent that they are alleged in the Operative Complaints, arising during the PAGA Period, for civil
24 penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698-2699.8
25 for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest
26 periods and associated premium payments, timely pay wages during employment and upon termination,
27 provide complaint wage statements, maintain complete and accurate payroll records, adopt standards that
28 minimize excessive indoor heat, provide suitable seating, and reimburse necessary business-related

1 expenses in violation of California Labor Code Sections 201, 202, 203, 204, 221, 223, 226(a), 226.7, 510,
2 512(a), 1174, 1182.11-1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and 6720, and the
3 applicable Industrial Welfare Commission Wage Orders. (*Id.*, ¶ 6.jj).

4 “Released Parties” means Defendant and its officers, directors, employees, and agents. (*Id.*, ¶
5 6.kk).

6 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

7 The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal.
8 App. 4th 1794 (1996)). “In general, questions whether a settlement was fair and reasonable, whether
9 notice to the class was adequate, whether certification of the class was proper, and whether the attorney
10 fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
11 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

12 The review and approval of a proposed class action settlement involves a two-step process. (*See*
13 *Cal. Rules of Court, Rule 3.769(c)*). First, counsel submit the proposed terms of the settlement and the
14 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
15 range of a fair settlement to justify providing notice of the proposed settlement to class members. After
16 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
17 settlement is fair, reasonable, and adequate. (*Ibid*).

18 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
19 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
20 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the
21 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
22 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
23 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
24 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
25 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
26 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

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1 Preliminary approval does not require a court to make a final determination that the settlement is
2 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
3 of the settlement has been given to the class members and they have had an opportunity to object or
4 exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a
5 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law
6 which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for*
7 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

8 **V. THE SETTLEMENT IS PRESUMED FAIR**

9 **A. The Settlement Was Reached as a Result of Arm's-Length Bargaining**

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
11 reached through arm's-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
12 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations
13 were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 34). Although a settlement
14 was not reached at mediation, it was reached after further negotiations and with continued assistance from
15 the Mediator. (*Ibid*). At all times, Plaintiffs were willing and prepared to litigate this matter through
16 class certification and trial if the Parties had been unable to reach a favorable resolution. (*Id.*, ¶ 58).

17 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

18 Courts typically assess the status of discovery in determining whether a class action settlement
19 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
20 Defendant produced a random sampling of putative class members' time and payroll data as well as
21 Defendant's relevant wage and hour policies, and information regarding the total number of putative class
22 members, the number of current versus former employees, the total workweeks worked by the putative
23 class members, the average rate of pay for the putative class members, and exemplar relevant arbitration
24 agreements. (Genish Decl., ¶ 35).

25 This information allowed Class Counsel to conduct an informed assessment and analysis of the
26 strengths and weaknesses of the claims and the potential class-wide damages. (*Id.*, ¶ 36). Based on
27 information exchanged, the Parties extensively briefed issues regarding class certification and liability
28 and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of

1 their respective positions. (*Id.*, ¶ 37). Additionally, settlement negotiations were conducted by highly
2 capable and experienced counsel. (Genish Decl., ¶¶ 1-7; Bradley Decl., ¶¶ 1-13). Accordingly, Class
3 Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

4 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal Positions**
5 **and Recovery Risks**

6 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
7 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
8 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
9 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
10 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
11 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
12 presence of a governmental participant, and the reaction of the class members to the proposed settlement.”
13 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

14 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
15 factual grounds for defending the Actions. Based upon Class Counsel’s experience litigating similar
16 complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification
17 and the merits of the Actions absent a settlement.

18 **1. Class Counsel’s Analysis of the Maximum Available Liability and Damages**

19 Class Counsel analyzed all available data and estimated Defendant’s maximum potential exposure
20 to be approximately \$22,399,486, assuming the litigation was successful at trial on *all* claims at issue and
21 further assuming that every employee had a violation for each claim on every shift worked. (Genish
22 Decl., ¶ 38). This maximum potential analysis was then reduced based on the challenges facing the
23 likelihood of obtaining class certification, prevailing at trial, and other attendant risks. (*Ibid*). This
24 estimate is based off an estimated maximum liability for all claims at issue and the total aggregate
25 workweeks during the relevant time period, less interest, and based on the analysis of the data which was
26 extrapolated out for all class members across the entire putative class period, which included: \$2,514,746
27 for meal period violations (less meal period premiums paid); \$6,737,125 for rest period violations at a
28 100% violation rate; \$6,737,125 for standards that minimize excessive indoor heat violations at a 100%

violation rate; \$137,341 for unpaid wages (regular, overtime, and double time wages) due to rounding; \$1,950,326 for unpaid off-the-clock work for 1 hour per workweek of off-the-clock work; \$191,925 for unpaid overtime wages at the required regular rate of pay; \$2,020,740 for waiting time penalties; \$1,869,750 for wage statement penalties; and \$240,408 for unreimbursed business expenses. (Ibid). Plaintiffs further estimated that Defendant faced an additional exposure of \$3,503,500 in potential, non-stacked (i.e., one penalty, per employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Together with the PAGA penalties, Defendant's maximum potential exposure totaled \$25,902,986 in damages. (Ibid).

2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

While Plaintiffs believe that Defendant faced significant exposure, substantial barriers to a recovery existed. Defendant contended that Plaintiffs' claims are not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. (Genish Decl., ¶ 41; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)). While Plaintiffs and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Genish Decl., ¶ 41; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class actions were certified either as part of a settlement or as part of a contested certification motion)).

For example, Plaintiffs' meal period claims, which were based on Defendant's alleged failure to provide lawful meal periods, have been increasingly difficult to certify in recent years. (Genish Decl., ¶ 42; *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on allegations that Defendant had failed to implement its policies and that its practices failed to allow Class Members to take meal breaks in the manner required under California law. (Genish Decl., ¶ 42; *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of common proof.")). Defendant contended that its policies and practices at all times during the Class Period were lawful. (Genish Decl., ¶ 42). Indeed, Plaintiffs' analysis revealed only a 37.2% violation rate for unique meal

1 period violations. (Ibid). Defendant further argued that the rate of purported meal period violations
2 reflected in the data would require individualized inquiry and that such inquiry would prohibit a class
3 from being certified. (Ibid). We also had to consider the risk that the Court would find validity in the
4 individualized proof defense to certification of Plaintiffs' meal period claim. (Ibid). Accordingly, a
5 discount of 65% was applied to the maximum potential value in order to account for the risks associated
6 with obtaining class certification, proving the underlying violations and reducing them by the premiums
7 Defendant was showed to have paid, as well as the cost and delay in recovering the alleged potential
8 damages. (Ibid). This process brought the value of this claim closer to \$880,161, after which a discount
9 of 60% was applied to account for the risks associated with succeeding on the merits and establishing
10 liability, bringing the value of this claim closer to \$352,064. (Ibid).

11 Additionally, a large portion of Defendant's overall liability lies in Plaintiffs' rest period
12 allegations. (*Id.*, ¶ 43). As with the meal period allegations, Defendant contended that it had a lawful
13 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
14 required under California law. (Ibid). Additionally, this claim was even more uncertain given the
15 difficulties associated with proving the alleged rest period violations, as Defendant was not required to
16 record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
17 legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with
18 requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).
19 Accordingly, for the reasons stated above, a discount of 65% was applied to account for the risks
20 associated with obtaining class certification, thereafter proving the underlying violations, and the cost
21 and delay in recovering the alleged potential damages, bringing the value of this claim closer to
22 \$2,357,994. (Ibid). Thereafter, a discount of 60% was applied to account for the risks associated with
23 succeeding on the merits and establishing liability, bringing the value of this claim closer to \$943,197.
24 (Ibid).

25 Plaintiffs also contended that Defendant failed to adopt standards that minimize excessive indoor
26 heat by maintaining an excessively hot working environment and failing to provide Plaintiffs and Class
27 Members with recovery periods. (*Id.*, ¶ 44). Defendant contended that it provided compliant recovery
28 periods to the Class Members and that its policies and practices during the Class Period regarding

1 minimizing any excessive indoor heat were lawful. (Ibid). Similar to rest period violations, this claim
2 was uncertain given the difficulties in associated with proving the alleged recovery period violations as
3 Defendant was not required to record these breaks. (Ibid). Given the lack of records demonstrating
4 recovery period violations, there were legitimate concerns Plaintiffs would not be able to certify these
5 claims or prove substantial damages with requisite certainty, which made the estimated value of this claim
6 also subject to much challenge. (Ibid). Accordingly, a discount of 65% was applied to account for the
7 risks associated with obtaining class certification, thereafter proving the underlying violations, and the
8 cost and delay in recovering the alleged potential damages, bringing the value of this claim closer to
9 \$2,357,994. (Ibid). Thereafter, a discount of 60% was applied to account for the risks associated with
10 succeeding on the merits and establishing liability, bringing the value of this claim closer to \$943,197.
11 (Ibid).

12 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
13 overtime claims. (*Id.*, ¶ 45). These claims were largely based on Defendant's rounding and unrecorded,
14 off-the-clock work performed by the Class Members. (Ibid). Plaintiffs argued that Defendant rounded
15 employees' time in a manner which was entirely in favor of Defendant and to the detriment of the
16 employees. While Defendant did round employees' time to the nearest quarter-hour in a non-neutral
17 manner, the analysis of Plaintiffs' time records showed that Defendant stopped its practice of rounding
18 in approximately February 2020. (Ibid). Plaintiffs' off-the-clock claims rested on unrecorded, off-the-
19 clock work performed by the Class Members both before and after their shifts and during purported meal
20 periods. (Ibid). This off-the-clock work included, amongst other things, requiring Plaintiffs and the other
21 Class Members to undergo mandatory exit searches. (Ibid). However, the individualized nature of why
22 this work was performed and the individualized nature of damages presented substantial concerns
23 regarding the manageability of the cases and the risk the Court could find these issues prevented
24 certification, and the estimated damages for these claims were based on an assumption that all Class
25 Members worked off the clock for at least one hour per week. (Ibid). Accordingly, a discount of 65%
26 was applied to account for the risks associated with obtaining class certification, thereafter proving the
27 underlying violations, and the cost and delay in recovering the alleged potential damages, bringing the
28 value of these claims closer to \$730,683. (Ibid). Thereafter, a discount of 60% was applied to account

1 for the risks associated with succeeding on the merits and establishing liability, bringing the value of
2 these claims closer to \$292,273. (Ibid).

3 Plaintiffs' unpaid wages claim was based on Defendant having failed to factor in all forms of non-
4 discretionary compensation into the regular rate of pay for the purpose of paying overtime compensation
5 and sick pay. (Id., ¶ 46). Defendant contended that it correctly factored in all forms of non-discretionary
6 compensation into the regular rate of pay for the purpose of paying overtime compensation. (Ibid).
7 Accordingly, a discount of 65% was applied to account for the risks associated with obtaining class
8 certification, thereafter proving the underlying violations, and the cost and delay in recovering the alleged
9 potential damages, bringing the value of this claim closer to \$67,174. (Ibid). Thereafter, a discount of
10 60% was applied to account for the risks associated with succeeding on the merits and establishing
11 liability, bringing the value of this claim closer to \$26,869. (Ibid).

12 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
13 statement claims. (Id., ¶ 47). First, these claims were derivative of Plaintiffs' claims for unpaid meal
14 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
15 and if certification was denied on those underlying claims, these derivative claims for penalties would
16 also likely fail. (Ibid). Further, even if Plaintiffs prevailed on their underlying claims, they would still
17 be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
18 violations. (Genish Decl., ¶ 47; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
19 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
20 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
21 such claims have an element of discretion attached to them rather than a pure calculation of damages after
22 liability is proven. (Genish Decl. ¶ 47; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
23 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
24 comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Genish
25 Decl., ¶ 47). Accordingly, a discount of 65% was applied to account for the risks associated with
26 obtaining class certification, thereafter proving the underlying violations, and the cost and delay in
27 recovering the alleged potential damages, bringing the value of this claim closer to \$1,361,671. (Ibid).
28 Thereafter, a discount of 60% was applied to account for the risks associated with succeeding on the

merits and establishing liability, bringing the value of this claim closer to \$544,668. (Ibid).

Plaintiffs further contended that Defendant failed to reimburse Plaintiffs and the other Class Members for necessary business-related expenses, such as the purchase of uniforms and badges and the time and expenses of training. (*Id.*, ¶ 48). Defendant contended that it had a policy and practice of reimbursing employees for necessary business-related expenses. (Ibid). Defendant further contended that, with respect to the alleged expenses for which Plaintiffs and the other Class Members never requested reimbursement from Defendant, it did not know and had no reason to know that alleged business-related expenses had been incurred. (Ibid). Defendant further contended that the reason for why a Class Member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses while not others, would raise individual issues that could not be certified. (Ibid). Accordingly, a discount of 65% was applied to account for the risks associated with obtaining class certification, thereafter proving the underlying violations, and the cost and delay in recovering the alleged potential damages, bringing the value of this claim closer to \$84,143. (Ibid). Thereafter, a discount of 60% was applied to account for the risks associated with succeeding on the merits and establishing liability, bringing the value of this claim closer to \$33,657. (Ibid).

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain proposition. (*Id.*, ¶ 49). In order to prove liability and damages, Class Counsel will need to request and analyze thousands of pages of documents, contact Class Members, and obtain declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of their employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

Class Counsel also separately contemplated the risks of proceeding with the PAGA claims and potential liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 50). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiffs' underlying wage claims. (Genish Decl., ¶ 50; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82

(C.D. Cal. 2008) (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff’s other claims fail as a matter of law, so does her PAGA claim”). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. (Genish Decl., ¶ 50).¹ Class Counsel also anticipated Defendant would argue that it made a good faith attempt to comply with its legal obligations and that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that it was in the best interest of the State of California and the PAGA Employees to enter into the Settlement, and to allocate Two Hundred Forty Thousand Dollars and Zero Cents (\$240,000.00) of the Gross Settlement Amount towards the PAGA claims, which represents approximately 10.91% of the Gross Settlement Amount. (*Id.*, ¶ 51). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the Settlement is significant, not only from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the

¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with obligations and minimal violations).

1 state, and deter future non-compliance by the employer. (Ibid). Accordingly, a 65% discount was applied
2 to account for the risks associated with proving the underlying violations and the cost and delay in
3 recovering the alleged potential penalties, bringing the value of this claim closer to \$1,226,225. (Ibid).
4 A second discount of 60% was applied to account for the risks associated with succeeding on the merits
5 and establishing liability, bringing the value of this claim closer to \$490,490. (Ibid).

6 Therefore, the total value that could reasonably be expected to be awarded at trial, after taking
7 into account the risks faced in prevailing on certification and substantively thereafter is \$3,626,418. (Id.,
8 ¶ 52). Seen in this light, the Gross Settlement Amount of \$2,200,000 represents 60.67% of the risk-
9 adjusted value of the claims. (Ibid).

10 Class Counsel therefore submits that the Settlement is in the best interest of the Class Members,
11 the PAGA Employees, and the State of California and is within the accepted range of recoveries for this
12 type of litigation given the inherent risk of litigation, the risk of obtaining and maintaining class
13 certification, and the costs of further litigation. (Id., ¶ 53).

14 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

15 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
16 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
17 community of interest in the question of law or fact affecting the parties to be represented; and (3)
18 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
19 is superior to other methods. (See *Dunk*, 48 Cal.App.4th at 1806). Plaintiffs contend that the Actions,
20 which are based upon Defendant's wage and hour policies and practices, satisfies the class certification
21 requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiffs'
22 allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

23 A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is 24 Impracticable

25 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
26 the class, and (3) the means of identifying the class members. (See *Miller v. Woods*, 148 Cal.App.3d 862,
27 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
28 defined as "current and former non-exempt employees who worked for Defendant within the State of

California at any time during the Class Period, including those individuals who have signed arbitration agreements.” (Genish Decl., ¶ 25; Settlement Agreement, ¶ 6.b). This provides a clear and definite scope for the proposed class.

Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, the estimated Class size of eight hundred and sixty-eight (868) meets the numerosity requirement.

Finally, the question of whether class members are easily identifiable turns on whether a plaintiff can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706 (1967)). The existence of an ascertainable class in this case can be established through Defendant’s payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987)).

B. The Class Shares a Well-Defined Community of Interest

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements are easily satisfied.

The commonality criterion requires the existence of common question of law or fact and is generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706). What is required is that a common question of fact or law exists which predominates over issues unique to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising from employment—is not a bar to class certification as long as they do not render class litigation unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

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1 Here, Plaintiffs' claims present common issues of law and fact that predominate and warrant class
2 certification. Plaintiffs allege that Defendant denied compliant meal and rest periods to employees,
3 required employees to perform work off-the-clock, failed to adopt standards that minimize excessive
4 indoor heat, failed to provide suitable seating, failed to provide employees' records, and failed to fully
5 compensate employees for all time actually worked. These policies and practices meant that Defendant
6 allegedly failed to pay minimum and overtime wages, and other related claims. Plaintiffs allege that
7 Defendant's policies and practices were uniform as to all Class Members. Thus, class treatment is
8 appropriate.

9 To satisfy the typicality requirement, California law does not require that plaintiffs' claims be
10 identical to the other class members. Rather, the test of typicality for a class representative is whether
11 other members have the same or similar injury, whether the action is based on conduct which is not
12 unique to the named plaintiff, and whether other class members have been injured by the same course of
13 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
14 for a class representative refers to the nature of the claim or defense of the representative, and not to the
15 specific facts from which it arose or the relief sought. (*See Ibid*).

16 Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that
17 Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other
18 Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business
19 practices as those of Class Members, the typicality requirement has been satisfied.

20 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
21 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of
22 the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these considerations are
23 satisfied. Class Counsel is well-regarded and is qualified and experienced in employment-related, class-
24 action litigation. (Genish Decl., ¶¶ 1-7; Bradley Decl., ¶¶ 1-13). Plaintiffs will vigorously, adequately,
25 and fairly represent the interests of the Class. Plaintiffs have, at all times, throughout the course of the
26 litigation considered the interests of the Class and understood that they must take steps to adequately
27 represent the Class and their interests. (Hernandez Decl., ¶ 8; Mata Decl., ¶ 20). Because Plaintiffs'
28 claims are typical of other Class Members and are not based on unique circumstances, there is no

antagonism between the interests of Plaintiffs and the Class.

C. A Class Action is Superior to a Multiplicity of Litigation

Under the circumstances, proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will come forward to prove his or her separate claim and whether the class approach would actually serve to deter and redress the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are superior to individual litigation.

VII. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of class action settlement agreements containing enhancements for the class representative, which are necessary to provide incentive to represent the class and are appropriate given the benefit the class representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and reasonable”)).

As part of the Settlement Agreement, Plaintiff Mata is requesting a reasonable Enhancement Payment of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff Mata. (Genish Decl., ¶ 54; Settlement Agreement, ¶ 12). This Enhancement Payment is eminently reasonable given the time and effort Plaintiff Mata spent on the case, and the benefit to the Class Members as a result of Plaintiff Mata’s actions. (Genish Decl., ¶ 54; Mata Decl., ¶ 25). Notice of the requested Enhancement Payment is disclosed to the Class Members in the Class Notice. (Genish Decl., ¶ 54; Settlement Agreement, Exh. A).

1 Plaintiff Hernandez has executed a separate agreement to settle and resolve his individual claims
2 with Defendant. (Genish Decl., ¶ 54; Hernandez Decl., ¶ 6).

3 **VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

4 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will
5 “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal, Inc.*, 82
6 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees
7 paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.* at 47). In cases
8 where class members present claims against a common fund and the defendant agrees to a percentage of
9 the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

10 Here, the requested attorneys’ fees of one-third (1/3) of the Gross Settlement Amount (i.e.,
11 \$733,333.33 if the Gross Settlement Amount is \$2,200,000.00) is disclosed to Class Members in the
12 proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated, is
13 common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval will
14 elaborate on the nature of the legal services provided and will also support Class Counsel’s request for
15 the reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero
16 Cents (\$25,000.00). (Genish Decl., ¶¶ 56 & 58). The Attorneys’ Fees and Costs that are not ultimately
17 approved by the Court shall instead be included in the Net Settlement Amount to be distributed to
18 Settlement Class Members. (Settlement Agreement, ¶ 11).

19 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
20 **MEETS DUE PROCESS REQUIREMENTS**

21 The Parties have jointly drafted the Notice Packet, which will be mailed to the Class Members.
22 (*Id.*, Exh. A, B, & C). The Class Notice will include information regarding the nature of the Actions, a
23 summary of the terms of the Settlement, the Class definition, information on how to object to and/or opt-
24 out of the Class Settlement and to dispute Workweeks and/or Pay Periods, and the date of the Final
25 Approval Hearing. (*Id.*, Exh. A). The Class Notice will list each Class Member’s total Workweeks and
26 their estimated Individual Settlement Share and each PAGA Employee’s total Pay Periods and their
27 estimated Individual PAGA Payment. (*Ibid.*).

28 ///

1 Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will
2 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
3 containing the following information for each Class Member: full name; last known mailing address;
4 Social Security number; dates worked for Defendant during the Class Period; and such other information
5 as is necessary for the Settlement Administrator to calculate Workweeks and Pay Periods (if applicable)
6 (collectively referred to as the “Class List”). (*Id.*, ¶¶ 6.d & 25). Within seven (7) calendar days after
7 receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the
8 National Change of Address Database or other similar services available, such as provided by Experian,
9 for information to update and correct for any known or identifiable address changes, and will mail a
10 Notice Packet in English and Spanish to all Class Members via First-Class U.S. Mail, using the most
11 current, known mailing addresses identified by the Settlement Administrator. (*Id.*, ¶ 26.a). After
12 obtaining competing bids from multiple potential settlement administrators, which included CPT Group
13 Inc. (\$16,750.00), Apex Class Action LLC (\$12,750.00), and ILYM Group, Inc. (\$11,950.00), the Parties
14 agreed to retain ILYM Group, Inc., which was the lowest bidder, to handle the notice and settlement
15 administration process and allocate up to Fourteen Thousand Dollars and Zero Cents (\$14,000.00) for the
16 Settlement Administration Costs (Genish Decl., ¶ 59; Settlement Agreement, ¶ 6.nn).

17 In determining whether to approve a settlement of a class action, a trial court has virtually
18 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
19 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
20 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
21 would result in a higher likelihood of actual notice. (Genish Decl., ¶ 60). The original source of the
22 mailing addresses is from Class Members, who provided the information to Defendant. (*Ibid.*).

23 Class Members will have forty-five (45) calendar days from the initial mailing of the Notice
24 Packet by the Settlement Administrator to submit a Request for Exclusion, Notice of Objection, and/or
25 Dispute (“Response Deadline”). (Settlement Agreement, ¶ 6.mm).

26 Any Notice Packet returned to the Settlement Administrator as undeliverable on or before the
27 Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed
28 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice.

(*Id.*, ¶ 26.b). If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine a correct address using a skip-trace or other search, using the name, address, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days. (*Ibid.*). In the event that a Class Notice is re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days from the original Response Deadline. (*Id.*, ¶ 6.mm).

Class Members will have an opportunity to dispute the number of Workweeks and/or Pay Periods to which they have been credited, as reflected in their respective Class Notices, by submitting a timely and valid letter (“Dispute”) to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶¶ 6.j & 27). A Dispute must: (a) contain the case name and number of one of the Actions; (b) contain the Class Member’s full name, signature, address, telephone number, and the last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member disputes the number of Workweeks and/or Pay Periods credited to that Class Member and what the Class Member contends is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 6.j).

Any Class Member wishing to be excluded from the Class Settlement must submit a timely and valid Exclusion Form or letter (both of which are referred to as a “Request for Exclusion”) to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶¶ 6.ll & 28). A Request for Exclusion must: (a) contain the case name and number of one of the Actions; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly state that the Class Member does not wish to be included in the Class Settlement; and (3) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, ¶ 6.ll). Notwithstanding the above, all PAGA Employees will be issued their Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. (*Id.*, ¶ 28).

To object to the Class Settlement, Settlement Class Members must submit a timely and complete Objection Form or written objection (both of which are referred to as a “Notice of Objection”) to the Settlement Administrator, by mail, postmarked on or before the Response Deadline. (*Id.*, ¶¶ 6.x & 29).

1 A Notice of Objection must: (a) contain the case name and number of one of the Actions; (b) contain the
2 objector's full name, signature, address, telephone number, and the last four (4) digits of the objector's
3 Social Security number; (c) contain a written statement of all grounds for the objection; (d) attach any
4 documents on which the objector is relying for the objection; and (e) be returned by mail to the Settlement
5 Administrator at the specified address, postmarked on or before the Response Deadline. (*Id.*, 6.x).
6 Settlement Class Members, individually or through counsel, may also present their objection orally at the
7 Final Approval Hearing, regardless of whether they have submitted a Notice of Objection. (*Id.*, ¶ 29).

8 **X. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs'
10 Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

11 Respectfully submitted,

12 Dated: February 28, 2025

BLACKSTONE LAW, APC

13
14 By:


Jonathan M. Genish
Attorneys for Plaintiff Cristo Hernandez

15 Dated: February 28, 2025

BRADELY/GROMBACHER, LLP

16
17 By:

/s/ Marcus J. Bradley
Marcus J. Bradley
Attorneys for Plaintiff Jose Armando Mata

Make a Reservation

HERNANDEZ vs ELDORADO NATIONAL (CALIFORNIA), INC.

Case Number: CVRI2201056 Case Type: Civil Category: Unlimited Civil Other Employment
Date Filed: 2022-03-14 Location: Historic Court House - Department 1

Reservation

Case Name:

HERNANDEZ vs ELDORADO NATIONAL
(CALIFORNIA), INC.

Case Number:

CVRI2201056

Type:

Motion for Preliminary Approval of Class Action
Settlement

Status:

RESERVED

Filing Party:

CRISTO HERNANDEZ (Plaintiff)

Location:

Historic Court House - Department 1

Date/Time:

05/01/2025 8:30 AM

Number of Motions:

1

Reservation ID:

555564398993

Confirmation Code:

CR-YETVNZM4PGMZRJG34

Fees

Description	Fee	Qty	Amount
Motion for Preliminary Approval of Class Action Settlement	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:

\$0.00

Type:

NOFEE

Account Number:

n/a

Authorization:

n/a

 [Print Receipt](#)

[+ Reserve Another Hearing](#)

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